

IMPACT OF TAX LAW ON LAND USE, CONSERVATION, AND PRESERVATION

HEARING BEFORE THE SUBCOMMITTEE ON OVERSIGHT OF THE COMMITTEE ON WAYS AND MEANS HOUSE OF REPRESENTATIVES ONE HUNDRED SIXTH CONGRESS FIRST SESSION

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IMPACT OF TAX LAW ON LAND USE, CONSERVATION, AND PRESERVATION

THURSDAY, SEPTEMBER 30, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON OVERSIGHT,
Washington, DC.

The Subcommittee met, pursuant to notice, at 1:01 p.m., in room 1100, Longworth House Office Building, Hon. Amo Houghton (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON OVERSIGHT

FOR IMMEDIATE RELEASE

CONTACT: (202) 225-7601

September 23, 1999

No. OV-11

Houghton Announces Hearing on Impact of Tax Law on Land Use, Conservation, and Preservation

Congressman Amo Houghton (R-NY), Chairman, Subcommittee on Oversight of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on the impact of Federal tax laws on environmental conservation and preservation. The hearing will take place on Thursday, September 30, 1999, in the main Committee hearing room, 1100 Longworth House Office, beginning at 1:00 p.m.

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. Witnesses will include representatives from the Administration, land conservation and environmental protection organizations, and other experts. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

BACKGROUND:

The Internal Revenue Code includes a number of provisions that provide incentives or tax benefits for land conservation and environmental preservation. Among them are the deductibility of gifts of land to charitable institutions [sec. 170]; the deductibility of gifts of conservation easements on land to charitable institutions and governments [sec. 170(h)]; expensing of environmental remediation costs [sec. 198]; the deductibility of gifts of land from a taxable estate [sec. 2055]; the deductibility of conservation easements from a taxable estate [sec. 2055(f)]; an exclusion from estate taxes for gifts of conservation easements on lands within 25 miles of a metropolitan statistical area (MSA), national park or wilderness or within 10 miles of an urban national forest [sec. 2031(c)]; a deduction for a post-mortem election to donate a conservation easement in certain areas [sec. 2031(c)]; a post-mortem election to terminate previously reserved development rights in certain areas [sec. 2031(c)(5)]; valuation of agricultural lands at agricultural value for purposes of estate tax, if the land is family-owned and used for agricultural purposes for 10 years after death [sec. 2032(a)]; and an exclusion from income of certain government conservation payments [sec. 126].

In announcing the hearing, Chairman Houghton stated: "So much of our country's beautiful green space is under development pressure. I am pleased that the American Farm Protection Act, a bill then-Rep. L.F. Payne and I introduced, was enacted in the last Congress. We need to see whether it is working as well as we had hoped. We also need to find out how the other current tax incentives are working and what further steps are needed to encourage people to protect land and other spaces."

FOCUS OF THE HEARING:

The Subcommittee will examine the impact of tax incentives in current law, as well as proposals referred to the Committee on Ways and Means to encourage environmental protections, conservation, and preservation. The hearing will follow up on the Subcommittee's July 11, 1996, hearing on the impact of Federal tax law on land use.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Any person or organization wishing to submit a written statement for the printed record of the hearing should submit six (6) single-spaced copies of their statement, along with an IBM compatible 3.5-inch diskette in WordPerfect 5.1 format, with their name, address, and hearing date noted on a label, by the close of business, Thursday, October 14, 1997, to A.L. Singleton, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Oversight office, room 1136 Longworth House Office Building, by close of business the day before the hearing.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be submitted on an IBM compatible 3.5-inch diskette in WordPerfect 5.1 format, typed in single space and may not exceed a total of 10 pages including attachments. Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

4. A supplemental sheet must accompany each statement listing the name, company, address, telephone and fax numbers where the witness or the designated representative may be reached. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.

Note: All Committee advisories and news releases are available on the World Wide Web at [HTTP://WWW.HOUSE.GOV/WAYS_MEANS/](http://WWW.HOUSE.GOV/WAYS_MEANS/).

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Chairman HOUGHTON. The hearing will come to order. Thank you, gentlemen, for being with us. We look forward to an interesting afternoon.

We have reviewed the background material for today's hearing about the deductibility of qualified conservation interests, an estate tax exclusion for land subject to permanent conservation easements, expensing environmental remediation costs, special use valuation, and tax exempt bonds. Now, it occurred to me that it would be easy to get bogged down in the minutiae of tax policy and lose sight of our goal, which is conservation and preservation. So we should be careful, obviously, not to do so today.

Mr. Gifford Pinchot, the founder of the U.S. Forest Service under President Roosevelt, used to say that a nation deprived of its liberty may win it, a nation divided may unite; but a nation whose natural resources are destroyed must inevitably pay the penalty of poverty, degradation, and decay. "Conservation easements" may not sound exciting, but preserving the environment for our children and our grandchildren, as everyone knows, is one of the most important challenges we face.

Congress enacted the American Farm Protection Act as part of the 1997 Taxpayer Relief Act. This bill added an exclusion from estate taxes for gifts of conservation easements. The relief is targeted. And remember, this provision was enacted in a time of budget deficits. There will probably be testimony today as to whether the limitations are too restrictive.

There is no shortage of good thinking about how our tax laws can be used to encourage people to conserve open spaces. Several of our colleagues, as well as the witnesses from whom we will be hearing today, have ideas that are well worth exploring.

When I testified before this Subcommittee 3 years ago, I suggested that whenever possible we should find ways to save open spaces through voluntary action, without the cost of public acquisition and maintenance, and without taking land off the local tax rolls. Not every conservation challenge can be met in this way, but many can be, and are.

So let us keep the benefit of voluntary action and private stewardship in mind as we hear from our witnesses today. I am looking forward to hearing their testimony. I would like to begin by recognizing my good friend, Mr. Coyne, for his opening statement.

Mr. COYNE. Thank you, Mr. Chairman. Today the Ways and Means Oversight Subcommittee will hold a hearing to review the current law tax provisions and pending legislation targeted toward improvement of this country's environment.

Conservation and preservation of our open land is of great importance to every American. Protecting our environment can take many forms: such as the clean-up of toxic sites, the expansion of publicly-owned parks and recreation areas, or local ordinances to preserve green spaces. Federal tax incentives can also be effective tools for encouraging the remediation of brownfields, the donation of land with conservation use easements, the use of energy-efficient consumer equipment, and the acquisition of open space and wetlands.

I have joined the Administration and many of my colleagues here in Congress in sponsoring numerous tax bills in support of environmental conservation and preservation. Among them is H.R. 1630, the Brownfields Clean-Up Act. This proposal, which is supported by the Administration, would make permanent the deduction under Internal Revenue Code section 198 for brownfields remediation costs.

The current law restriction—which requires that expenditures be incurred before the end of the next year—would be eliminated under this legislation. Providing special tax benefits on a permanent basis would remove doubt among taxpayers as to the future deductibility of remediation expenditures, and would promote clean-up of contaminated sites nationwide.

Today we will hear about a number of bills that would use the Tax Code to achieve important environmental or conservation goals. Ways and Means Committee Democrats have been actively involved in developing a number of those bills, and I believe that there is bipartisan support for such legislation.

I want to thank Chairman Houghton for holding today's hearing, and I look forward to working with the Chairman and colleagues on both sides of the aisle to provide incentives in the Tax Code for pro-environment activities.

Chairman HOUGHTON. Thanks, Bill, very much.

Does anyone else have an opening statement? Would you like to say something?

Mr. PORTMAN. Just briefly, Mr. Chairman, to thank you for holding this hearing. It is very important that we begin to look carefully at all of the various existing tax provisions and potential tax provisions that can help with regard to land use, conservation, and preservation.

I am delighted that the legislation I introduced, Mr. Chairman, H.R. 2880, is part of that. And I look forward to the testimony from our colleagues and from our experts on it. And thank you for holding the hearing.

Chairman HOUGHTON. All right, good. Well, again, thanks very much for being with us. Why do we not start from my right with Congressman Hoeffel from Pennsylvania. Would you like to begin the testimony? And then we will just go right down the line here.

STATEMENT OF HON. JOSEPH M. HOEFFEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. HOEFFEL. Thank you very much, Mr. Chairman and colleagues. I appreciate the opportunity to address this Subcommittee, and I thank you for holding this hearing. And I thank you for mentioning Governor Pinchot—a great Pennsylvanian, who helped to start the “Open Space” preservation program in our State before he took his good ideas to the national level.

I wanted to limit my testimony today to H.R. 2446, the Better America Bonds proposal, that I think offers a wonderful opportunity for us to preserve open space, to plan for growth, to manage the growth that is occurring across our country, and to help revitalize brownfields.

I will not read my testimony that I have submitted in writing, but I will simply summarize by saying, first off, revitalizing

brownfields is a critically important issue, not just for the reinvestment that Better America Bonds would permit in our denser areas, our more developed areas, that are being abandoned as growth leapfrogs away from the cities out into the countryside; but every time you save a brownfield, you literally save a farm field. If you can reclaim an industrial site and direct investment or attract investment back to that site, that is one less farm field that will be developed for a new use. So reclaiming brownfields has many benefits, economic as well as environmental.

The beauty of the Better America Bonds proposal is for a relatively small Federal income tax credit—a proposal of three-quarters of \$1 billion—we would be able to generate \$10 billion of interest-free loans at the State and local level to promote open space preservation, planning proposals, regional planning, growth management strategies, and the revitalization of brownfields that I just mentioned.

And certainly, we can all agree that the planning and zoning decisions that we need to make in this country need to be made at the local level. And no one is trying to change that. I do not want, and nobody wants, the Federal Government to make zoning and planning decisions. But there is a role for us to advocate, to promote—and to help finance through a Federal income tax credit—that kind of aggressive work at the State and local level, to plan for the growth that is occurring in our country.

The second point is, that growth is not happening everywhere. And that is why I fear Congress is not paying as much attention as it should. It is essentially happening in our suburbs; they are growing in population. There are whole stretches of this country that need more development, would welcome more industry, would welcome more residential neighborhoods, but the suburbs of our country—And certainly, in Montgomery County, Pennsylvania, we are threatened, we are stressed, by too much development.

Now, we are not going to stop growth, and we do not want to. Because even where I live, growth means jobs and opportunities. But we ought to be able to manage it; to direct growth into certain areas; to preserve farmland in other areas; to encourage recreational opportunities, both passive and active recreation, in other areas; and to have some rhyme and reason to the development that we see in the suburbs of our Nation's great cities.

This Better America Bonds proposal would enable local and State governments to finance the kind of bonds that are needed to do this. As a county commissioner in Montgomery County, Pennsylvania, I helped start a 10-year, \$100-million bond program, at county expense, to give mostly to our local governments, on a 90–10 matching grant—90 percent on the county—the funds to make open space acquisitions. It is the most popular thing Montgomery County government has done in its history, and it is working well.

But not all municipalities can do that on their own. The Better America Bonds Federal income tax proposal gives us a tool to encourage that around the country. And I would urge the Committee to give it favorable attention. Thank you, Mr. Chairman.

[The prepared statement follows:]

**Statement of Hon. Joseph M. Hoeffel, a Representative in Congress from
the State of Pennsylvania**

Thank you Mr. Chairman. For the record, my name is Joe Hoeffel and I represent the 13th District of Pennsylvania.

Thank you for recognizing me today to speak in support of the use of tax incentives for land conservation and environmental preservation. Specifically, I will address the need for H.R. 2446, the Better America Bonds Act of 1999. This bill would create a new tax incentive to preserve green spaces, develop local parks, protect the quality of our water supply and cleanup brownfields.

Throughout the country suburban growth continues to consume farmland and wooded acres. Who among us has not driven down a country road and seen the familiar sign on the side of a barn "Land for Sale—Subdivision possibilities?" In my district, sprawl has been consuming land at the rate of one acre an hour for the past twenty years.

We seem to take it for granted that there is plenty of space in our country for new houses, new industrial parks, new highways, and new shopping centers. More importantly, we now need to give serious consideration to what areas need to be protected from these uses. Open space is not just the space left over after the development is finished. We need to actively work to conserve wetlands. We need to identify the historical areas that must be protected from the wrecking crews. We need to protect the habitat for the animals and plants that renew our air and our water.

There are local efforts throughout this country to preserve and protect the open space that is needed to maintain an acceptable quality of life. For example, just last week, we passed a bill that will declare the Schuylkill River Valley, in eastern Pennsylvania, a national heritage area. Local officials and private citizens envision a greenway or linear park along this river, which has long been hidden from our view by railroads and factories. In June, these citizens traveled the length of the Schuylkill River by canoe and became aware from that perspective what valuable natural resource had always been there. A management plan will be developed to assure that this resource is preserved. Better America Bonds may provide the means to execute that plan and develop this resource in a protected and careful manner.

I believe that fighting sprawl, planning for growth and preserving open space are primarily issues for state and local governments. States and municipalities must deal with these issues, develop their own plans and make local decisions about what should be saved.

Certainly, though, there is an important role for the Congress to advocate and promote these policies and to provide the resources to help local and state governments and non-profit organizations. We need national vision with local control to fight urban and suburban sprawl.

When I was County Commissioner in Montgomery County, Pennsylvania, we were able to establish one of the largest open space programs in the country. However, I am aware that not all counties have the means to protect their resources. The Better America Bonds program provides the means for these investments that might not otherwise be possible.

I believe it is important for the Congress to establish programs that provide incentives for preservation and conservation goals to be achieved. It is appropriate for the federal tax system to reward those who choose to preserve our natural resources and protect our environment.

I support the Better America Bonds because:

- They establish an incentive for local initiatives to achieve local goals and save local resources.
- They offer the incentive for preservation of open space and wetlands,
- They help localities develop public parks and greenways.
- They provide the borrowing power for remediation of land that has been abused in the past and may need extensive cleanup to revitalize entire neighborhoods.

As this committee is well aware, tax incentives can be a powerful motivator of human behavior. I believe that it is appropriate and legitimate for the tax system to be used to support the public policy goals of local governments, especially when those goals are also consistent with the national welfare. It is clearly in the national interest to protect and preserve our natural heritage resources, to protect and restore the wetlands that are so crucial to the health of our ecosystems and to encourage the redevelopment of brownfield properties. Of course, such tax credits must be paid for in the confines of a balanced budget.

Chairman HOUGHTON. Thanks very much, Joe.
Mr. Blumenauer.

STATEMENT OF HON. EARL BLUMENAUER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. BLUMENAUER. Thank you, Mr. Chairman. And I appreciate the courtesy in being able to join with you today. And I think of the lineup here on this side of the dais: Each of us is involved in our own ways with efforts to promote livable communities. I have had a chance to be in a couple of your districts—in Mr. McInnis' district and in Mr. Coyne's district—and I found that people care about these issues in very profound ways.

There are three ways the Federal Government can make a difference. One is the traditional fashion, with direct expenditures. And we have got lots of programs floating around of dubious benefit and questionable ability on our part to sustain them, even in these times of prosperity.

The second way that we can make a difference is by leading by example, where the Federal Government actually behaves in ways that we are telling the rest of America to play. Like I want the Post Office to obey the local land use environmental laws that the rest of America operates under, and I am please that over 130 of my colleagues in the House have agreed with that approach legislatively.

The third way is by using creatively the impact of the tax system. And I commend the Ways and Means Committee. And all of you were a part of a package that brought forth to the House in recent tax reform one little element that has not received enough attention for the impact that it has had in promoting livable communities across America.

That is when you, in your wisdom, decided that you were going to increase the tax deduction for the resale of residential property. And as we know, virtually no one in America paid it except the dumb, the distressed, and the divorced. But it had the perverse effect of encouraging people to always buy more and more expensive homes, or stay put. The tax system was distorting the housing decisions of American families. And you helped lead the way in changing that, and it is having a significant effect in terms of livability in our communities, sprawl, and intrusion into open space.

You can do the same thing today with legislation that is before you. I am very much impressed, and am a cosponsor of legislation by your colleague, Representative Nancy Johnson, H.R. 2263, part of the thrust of the discussion here today. I am very supportive of Congressman Coyne's Brownfields Clean-Up Act, H.R. 1630, which would directly help our communities with the permanent authorization of the tax provision that allows those cleaning brownfields in enterprise zones and other areas a tax deduction on clean-up costs. It would give immediate benefits, and relieve development pressures on greenfields.

There is H.R. 2380, the Energy Efficient Technology Act introduced by Congressman Matsui, and as has been referenced, H.R. 2446, the Better America Bonds, which I also am cosponsoring.

There are two other items that I would put on this agenda that I think are a part of this mix that I would hope that you would consider. One is H.R. 1172, the Historic Home Ownership Tax Credit, that would permit opportunities to provide preservation in established neighborhoods, and again avoid encroachment into open space around the country. When you are a buyer of real estate, you not only look at the building you are buying, but the surrounding neighborhood. This would have an opportunity. In all of our districts, we would find communities where this would make a big, big difference.

I hope that you would, as you are thinking in these terms, even though you have passed some activities that relate to the estate tax that has been vetoed—we are sort of out here shimmering—I think in the same light that you are bringing forward your consideration today, looking at some estate tax provisions that would relieve the burdens on woodlots and farms at the same time you deal with small family-held businesses—As long as those are going to retain, in limited ownership and practice, farming, woodlot, or for that matter small business, I think you would find that there would be the vast majority of people in the House who would step forward to support it.

It would relieve pressure, again, on what we are seeing on the greenfields, open space. I think you would provide a tremendous benefit. And it would have minimal cost in the context of what we have been talking about with inheritance tax reform and other tax benefits.

I know you have got a very full agenda here today, but I would like to express my deep appreciation for your attention. I hope you will think about expanding your scope—just a tiny bit—to include other elements that are in this same basic thrust. I think it will make a huge difference in our efforts to promote livable communities across America.

Because in the final analysis, what we are here for in Congress is for the Federal Government to be a better partner in making sure that our families are safe, economically secure, and healthy. I think you are starting along the right line, and I look forward to working with you in that effort.

[The prepared statement follows:]

Statement of Hon. Earl Blumenauer, a Representative in Congress from the State of Oregon

I want to thank Chairman Houghton and Ranking Member Coyne and the Committee for focusing on one of the most important issues America is facing—how we build and design our communities to be more livable.

A livable community is one where people are safe, healthy and economically secure. Our quality of life in large part depends upon the design and placement of our buildings, parks, schools, and the access we create to these places. My goal is for the Federal Government to be a better partner, helping to give people more and better choices in how they live, work and travel. How the elements of land use and conservation fit together make a tremendous difference to our communities.

You have heard from my colleagues about several important legislative proposals before the committee that I support:

- H.R. 2263 by Representative Nancy Johnson that encourages contribution of property for conservation and easements
- Representative Bill Coyne's Brownfields Clean Act H.R. 1630, that would directly help my community of Portland, Oregon with the permanent authorization of the tax provision that allows those cleaning brownfields in enterprise zones and

EPA pilot project. This tax deduction on the cleanup costs would give immediate benefits and relieve development pressures on greenfields.

- H.R. 2380 the Energy Efficient Technology Tax Act introduced by Congressman Matsui that provides for \$3.6 billion in tax incentives over five years in the four major carbon-emitting sectors of the economy—buildings, industry, transportation and electricity. Tax credits go towards energy efficient homes, buildings, hybrid vehicles, and solar and wind energy technology.

- H.R. 2446 the Better America Bonds proposes a new financing tool generating \$9.5 billion in bond authority for investments by state, local and tribal governments in green spaces, urban parks, water quality and brownfields cleanup. Tax credits totaling more than \$700 million over five years are proposed to finance the bonds.

I support these pieces of legislation and I am glad the committee will be focusing on them in this hearing.

There are two items that I wanted to mention in more detail:

- H.R. 1172 the Historic Home Ownership Tax Credit
- The reform of the inheritance tax to promote sound land use

Since I've been in Congress I've traveled to over 41 communities and I am amazed at how communities are dealing with the issues of growth and urban flight. Last November voters dealt with over 240 ballot initiatives that dealt with urban growth boundaries, land conservation and growth.

There are pushes and pulls to neighborhoods. In the real estate industry there are factors known as the tipping factor. The tipping factors are elements that change a good neighborhood to bad or vice versa. When you are a buyer of real estate, you not only look at the building you are buying, but the surrounding neighborhood. Houses and structures that fall into disrepair or become dilapidated or abandon easily tip a good neighborhood to a bad.

Many times the renovation of an older structure is harder to find financing for, or is more costly than buying new. This is the push factor. It pushes people out to new areas and areas where they may not be an existing infrastructure.

The Historic Home-Ownership Tax Credit H.R. 1172 expands the commercial rehabilitation tax credit for historic properties. It helps pull people back to historic areas where there is already an infrastructure.

This bill in its current structure as a tax credit gives a 20 percent income tax credit that can be converted to a mortgage credit certificate to buy down the interest on a mortgage. The tax credit can be used in Enterprise Zones as the credit can be converted and applied towards the down payment of a house.

Keeping this structure as a credit rather than a deduction keeps it flexible allowing the American consumer who falls into the middle or lower income range an opportunity to take advantage of the credit. Restructuring the credit to a deduction cuts out this portion of the American population.

The credit will help neighborhoods from tipping from a good neighborhood to a bad neighborhood and may even help restore many of the unique structures that give character to a community.

This is another means for the federal government to help provide more choice for American families and to help preserve American heritage.

The inheritance tax on small family-owned businesses, closely-held corporation, wood-lots and farms needs to be reformed. Family businesses should not be forced to sell because of the death of a principal. As long as they want to continue to operate as a closely-held business there should be no tax liability. If they want to cash out this is a different discussion.

This is much like the repeal of the capital gains tax on residential sales. It would have little fiscal impact and would make a tremendous difference in our land-use patterns, allowing people to keep and manage property, not driven by financial decisions motivated by inheritance tax liability.

The federal government should be leading by example with the placement of federal buildings like the Post Office and GSA.

I have a little bill, H.R. 670 that requires the Post Office to obey local land use laws.

While I know the focus of this hearing is on tax credits and financing, I wanted to mention GSA and the Post Office as examples of how the federal government with their buildings and sitings lead by example and are things that I will be talking to you about personally.

I want to thank the Members of the committee for their work. There are many good pieces of legislation that I am looking forward to helping get through the congressional process. It is my goal in Congress to help make the federal government a more flexible partner to help give Americans more choices in how and where they live and move about in their community. I appreciate all the attention Chairman Houghton and Ranking Member Coyne and the Committee has given to these qual-

ity of life issues. Given the current mood in Congress and our budget straight jacket you may have the only show in town.

Chairman HOUGHTON. Thanks very much. I appreciate it.
Now, Paul Kanjorski.

STATEMENT OF HON. PAUL E. KANJORSKI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. KANJORSKI. Mr. Chairman, thank you very much. Mr. Chairman, I am looking at the Better America Bonds as a tremendous tool that I have no doubt, regardless of what form it comes out in, should be pursued, because it has deleted the best of all elements. It has the private sector involvement; it has a government forgiveness, but not a direct subsidy, of the full amount; and it requires those people who are using the Better America Bonds to use market considerations in how the application should be used. So it is the best of all well and delicately thought-out plans.

However, there are significant problems as it presently is created, and I would like the Committee to look at correcting these problems so that it properly applies across the country. First and foremost, it has a provision calling for the pledging of full faith and credit of local governments: Obviously written by an investment bond counsel from Wall Street working at Treasury. Because there are many ways in which the bond holder gets secured without having the full faith and credit of the community or political subdivision issuing the bond. And if you examine the country, the distressed areas of the country, it is highly politically unlikely and, in many instances, without a sufficient basis, to issue full faith and credit bonds.

So if you leave that provision in there, you are denying people to get insurance on bonds, or having clever ways of structuring the bond issue; but, in fact, are favoring the more sophisticated and the wealthier communities who want to engage sometimes in a dilettante use of the fund, as opposed to putting it to hard work. So that is one major place requirement that we should eliminate.

The Federal Government should not get involved in the risk factor. If we have people who will buy these bonds, whether they are insured or however they are protected, or they are supported by assets, we should not have to require that a community or political subdivision or an entity issuing these bonds pledge their full faith and credit.

Second, I think that it is very nice to look at a per capita allocation, but per capita is grossly disadvantaging the rural and exurban areas of the country. Because the density is in the cities, and that is where the major portion of the bonds will go; whereas the distressed communities and the disturbed and degraded lands are in the countryside. So if you use a per capita formula, you are going to concentrate this in the high-density areas of the United States, which have the least amount of land to be preserved or reclaimed.

Third, there should be an emphasis on encouraging regional activities. And when I talk about regional activities, I direct myself

maybe more to Pennsylvania and to New York and the East, who suffer from the “small city syndrome,” if you will.

Right now, Pennsylvania has 2,400 communities. Ninety-five percent have fewer than 3,500 people. So 95 percent of those communities lack the professionalism, and the capacity, to put an application in for Better America Bonds. So by virtue of just having that restriction in there, only the more sophisticated urban areas of the State would have the wherewithal to understand and to use the Better America Bond concept. And particularly in Pennsylvania, we very often use an authority system, where groups of communities come together. And that would cause a regional effect and a regional impact. I would certainly recommend that.

Finally, I want to address the idea of brownfields. I hope that term is not used, because “brownfields” is starting to become a word of art. And if you look at most of the EPA regulations, former mine-scarred lands are not qualified or defined as brownfields. And to a large extent, in the Commonwealth of Pennsylvania and through the coal belt of the United States, a good part of the distressed lands that these Better America Bonds should be used to correct and help out would not qualify, because they are not considered brownfields.

And again, as my fellow colleague from Pennsylvania pointed out, every time we re-use mine-scarred land as an industrial park, there are that many thousands of acres that do not have to be taken out of the pristine environmentally clean farmlands and beautiful areas of the country, even within the same jurisdictions where this is happening.

Finally, I want to say that I go back to my experiences as a lawyer before I came to the Congress. And very often, people who work in government and write this legislation perhaps should be sent out in the countryside every now and then to work with it.

There is an anti-arbitrage provision. First of all, I think that is impractical, to put a set amount of how much time can be arbitrated. And I would recommend that we give discretionary power on arbitrage. Because in some communities, by granting the power to arbitrage, that may be the only way they can either sell the bond or structure the program.

To put a 3-year limit on arbitrage defines the fact that the individual writing the statute never put a public works program together on a municipal level. And in a major part of my practice before I came to Congress I did sewer systems, water systems, highway systems, and I could not think of one that ever was performed within 3 years. You are very lucky if you have the conceptual idea off the ground, ready to go to the engineer, in 3 years. All of these concepts we are looking at are really 10-, 15-, 20-year programs.

Finally, I am very jealous—And I know I am over my time. I represent northeastern Pennsylvania, the anthracite coal district. I know the Chairman has to drive through my district. We have been passed over now for 40 or 50 years. There is no program in the United States that allows us to buy that land, reclaim that land, put it in productive use.

The Better America Bonds—if they are properly defined and the categories are broad enough and discretionary enough—are ideal partial programs to be used in a concept that will allow the coal

fields of America to finally reclaim their degraded and devastated land. It would be very unfortunate if the structure of Better America Bonds helped the sophisticated and wealthier suburbs preserve their greenway, and forced the distressed communities of America to continue to live with the degradation of prior practices, where no relief has come from the Federal or the State governments, and it is impossible to come from the local government.

So I urge that a portion of this program be designated for distressed areas, and that it understand that that is what is necessary: a program to bring back degraded and misused land of the past into the present, so that these people, too, can consider themselves conservationists and environmentalists. Thank you very much, Mr. Chairman.

[The prepared statement follows:]

Statement of Hon. Paul E. Kanjorski, a Representative in Congress from the State of Pennsylvania

Mr. Chairman, I appreciate the opportunity to testify before you and the other Members of the Subcommittee this morning on the impact of Federal tax laws on environmental conservation and preservation. I want to express my strong support for the Administration's Better America Bonds proposal. While I believe that the Better America Bonds program will give local communities a tremendous tool to preserve land and clean the environment, I feel that several changes and/or clarifications would help to improve its overall design and implementation.

On that note, I would like to briefly recount the environmental and land use challenges facing Central and Northeastern Pennsylvania. The anthracite coal region of Central and Northeastern Pennsylvania contains approximately 120,000 acres of mine-scarred land that must be reclaimed if the region is to solve its environmental problems and sustain economic development. Because most of the region's mining took place prior to the adoption of strict environmental programs, much of the land is devastated by dangerous strip pits, underground mine fires and huge mounds of coal waste. In most cases, this land is owned by private individuals or companies which had nothing to do with the deterioration of the land. The cost of restoring the land often far exceeds the value of the current value of the land. In time, I am confident that the many other attributes of Northeastern and Central Pennsylvania will attract the kind of private sector investment that will encourage landowners to reclaim their land to put it into productive use, but the public sector can encourage thoughtful growth by restoring this land now. The Better America Bonds could play a key role in the comprehensive restoration of the anthracite region.

Without land reclamation, Northeastern Pennsylvania will not be able to address its most pervasive water quality issue: acid mine drainage. Water flowing from existing and abandoned mine sites has caused pollution so severe that plant and animal life that once abundantly existed in streams before mining began, no longer survives in great numbers. In my congressional district, for example, mine drainage significantly deteriorates water quality and prevents the migration of fish from the Susquehanna River into upstate New York. Further, the U.S. Environmental Protection Agency has determined that the primary source of industrial pollution into the Chesapeake Bay comes from the acid-mine drainage originating in Northeastern Pennsylvania and delivered by the Susquehanna River. Thus, a reclamation program supported by Better America Bonds could have a national and regional impact.

Although the current Internal Revenue Code includes a number of provisions that provide incentives or tax benefits for land conservation and environmental preservation none of these provisions have been successfully accessed to reclaim mine-scarred land. Better America Bonds would represent the first genuine effort by the federal government to give communities a tool to undertake significant land preservation and protection. For a few select communities, Better America Bonds will be a tremendous resource. The Administration has designed the program to address the growing number of communities struggling to preserve their environmental resources.

However, it is important for this program to be available for the purchase and redevelopment of degraded land, which is a pressing issue for many communities including other areas which have been adversely affected by past mining. In addition to the environmental problems associated with mine-scarred lands, economic

development is adversely affected. Companies and their workers do not want to locate in areas of environmental devastation. Another insidious result is that ever increasing amounts of pristine land is falling to development because the presence of mine-scarred land precludes growth.

In addition to guaranteeing that degraded land is eligible for Better America Bonds funds, any proposed legislation should insure that a diverse group of communities is able to participate in the program. The Better America Bonds program or any tax incentive should be designed as to allow for participation by only the most established, financially-sophisticated, and wealthiest communities. Such a result would leave those communities who arguably need the resources the most without the help that they need. If properly designed, the Better America Bonds program has the ability to achieve a variety of goals for a variety of community problems. Several minor changes would create a more encompassing program that will effectively reach more communities.

By requiring communities to pledge the full faith and credit section for these bonds, for example, many small and economically disadvantaged communities will not be able to apply for them. I would therefore recommend that communities be able to purchase bond insurance instead of pledging their full faith and credit. The proposed legislation recommends a per capita distribution of the bonds, which may not be the most appropriate allocation method. The government should allocate a set percentage for economically distressed areas or provide them with a significant preference in the application process. When allocating the bonds, the government should also give a preference to regional initiatives. To support regional initiatives, regional authorities created under state laws should be eligible to apply for Better America Bonds. These small adjustments to the legislation would greatly enhance the ability of small communities and economically distressed regions to utilize the bonds.

As the Committee considers the Better America Bonds legislation, I would recommend eliminating the requirement that issuers use funds within three years. It may take communities several years to set in place a major environmental restoration initiative. As you know, the wheels of government can move slowly especially at the local level. Finally, a repayment period of 20 to 25 years may be more appropriate than the fifteen repayment schedule in the bill.

Once enacted, the Better America Bonds initiative will create a tremendous resource for local communities to enhance control of their land use decision-making process, protect the environment, and promote economic development. I hope that you will consider the points I have raised about this proposal to provide tax incentives that adequately address the unique and diverse needs of all communities.

Although this proposal has been hailed by primarily high-growth regions of the country seeking to preserve their limited green space, I believe it can be extremely valuable for regions like mine which has not experienced intense development.

I look forward to working with the Members of this Committee to enact bipartisan legislation that will address both environmental preservation and restoration.

Chairman HOUGHTON. OK, thanks very much, Paul.
Mr. Gilchrest.

STATEMENT OF HON. WAYNE T. GILCHREST, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. GILCHREST. Thank you, Mr. Chairman. First, I would like to say that I like the water pitchers in the Ways and Means Committee hearing room. We will try to get them changed—

Chairman HOUGHTON. Just be sure you do not break them.
[Laughter.]

Mr. GILCHREST. They are very picturesque. We will try to change the natural resources—water pitchers.

I would also like to say, Mr. Chairman and Members of the Committee, that the use of tax incentives to encourage conservation I think is a positive way to bring people together to protect not only open space—I know we do not want to overuse the term

“brownfields”—but to understand the nature of protecting the mechanics of natural processes upon which we all depend as human beings. And I think tax incentives are a powerful tool to do that.

First, however, I would like to talk a little bit about section 508 of the Taxpayer Relief Act of 1997. This is an excellent piece of legislating. And I commend the Chairman, and I believe this provision was the result of your efforts.

This section amends section 2031 of the Tax Code to allow a deduction for estate and gift tax purposes for a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes, provided the property is within 25 miles of a national park or wilderness area. All too often, heirs are forced to subdivide or sell their property just to pay the taxes.

Section 508 holds a lot of promise for my constituents—if we could only get the Internal Revenue Service to answer a couple of simple questions: Where does this provision apply? Did we mean for it only to apply to landowners within 25 miles of one of the 54 crown jewel national parks? In my district, Mr. Chairman, we have Assateague, which is a national seashore, which comes under, I understand, the jurisdiction of the National Park System. But we also have Blackwater National Wildlife Refuge.

Now it is my understanding that the Internal Revenue Service has not issued any criteria upon which a landowner, especially in my situation, can take advantage of those estate tax provisions. And we would really like the Committee to look into that particular prospect, so landowners in my area can take advantage of that.

One reason with me is a sense of urgency because Assateague is just south—Mr. Chairman, your grandchildren could hit Assateague from Ocean City with a stone. The development pressures in that area are enormous. And if landowners know they can take advantage of this estate tax provision, I think it would go a long way in preserving some of that land.

I would also like to talk a little bit about expanding the idea of this tax incentive provision not only to estate taxes, not only to agriculture, not only to brownfields, but to the whole concept, which is usually controversial, of the Endangered Species Act.

Recently, the Environmental Defense Fund released a report entitled “Rebuilding the Ark.” And in that report, it stated—which is true—“81 percent of habitat for endangered species is not on Federal land; it is on private land.” And so, while we have preserved the peregrine falcon, the bald eagle, and other species that are sort of glowing in our minds as symbols of the United States, the whole biological diversity of this country is dependent upon everybody participating in the Endangered Species Act program.

But unfortunately, many people feel that if they find an endangered species on their property, they are going to be over-regulated and under-compensated, and then they are going to bury this or get rid of it. There is no real incentive, I do not think, other than the idea that “I want to protect biological diversity” for private citizens on private property.

Now, I am not proposing that we create a tax break to pay for people to comply with existing law. What I would like to do is give the Committee some idea that we provide a tax incentive in the same way for people that have private property and endangered

species that we would for agriculture or any other land conservation program. But these people, who have to comply with the law, but maybe want to go a little further by enhancing habitat, might, because it is of public value, get some type of tax incentive in order to do that.

Given the success of using tax incentives to encourage landowners to donate property or conservation easements to charitable groups, I feel strongly that a similar measure of success will come from allowing similar tax breaks for endangered species and management activities.

And I see that the red light is on, Mr. Chairman, and I thank you for the time.

[The prepared statement follows:]

Statement of Hon. Wayne T. Gilchrest, a Representative in Congress from the State of Maryland

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify on the use of tax policy to achieve environmental conservation goals. Tax breaks are a powerful incentive for many landowners to work with conservation groups to put land in perpetual conservation easements to preserve open space and habitat for wildlife. In many cases, they have been extremely successful. I believe we should look at expanding the successful use of tax incentives to encourage conservation activities.

First, however, I would like to talk a little about Section 508 of the Taxpayer Relief Act of 1997 (P.L. 105-34). This is an excellent bit of legislating and I commend the Chairman—I believe this provision was the result of his efforts. This section amends Section 2031 of the tax code to allow a deduction for estate and gift tax purposes for a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes, provided the property is within 25 miles of a national park or wilderness area. All too often heirs are forced to subdivide and sell property in order to pay the estate tax bill, often to the detriment of the environment.

Section 508 holds a lot of promise for my constituents if we could only get the Internal Revenue Service to answer a couple of simple questions. Where does this provision apply? Did we mean for it only to apply to landowners within 25 miles of one of the 54 crown jewel National Parks, or did we intend a more broad application? More specifically, do the areas around Assateague Island National Seashore and Blackwater National Wildlife Refuge on the Eastern Shore of Maryland meet this criteria? As you may know, both are federal properties, managed with conservation as a primary mission. The National Seashore, in particular, is a unit of the National Park System even though it is not called a national park. This is a particularly important question as the area around Assateague is under significant development pressure and this tool would help encourage land conservation. I strongly urge the IRS to issue some guidance on the use of Section 508 to provide certainty and clarity for landowners seeking to plan their estates.

I look forward to working with the committee to help make this incentive available to my constituents.

We need to create more such options for landowners in order to actually restore and sustain our nation's biological diversity. Recently, the Environmental Defense Fund released a report entitled "Rebuilding the Ark: Toward a More Effective Endangered Species Act for Private Land." This report contains some startling (or perhaps not so startling) statistics. More than half of the endangered or threatened species in the United States have at least 81 percent of their habitat on non-federal land (most non-federal land is in private ownership). Between a third and a half of the protected species do not occur at all on federal land. In addition, the authors of the report point out more than 60 percent of listed species will need active management measures in order to survive and recover. This is of particular concern when we consider that over time, while spending for endangered and threatened species in general has increased, spending per listed species has declined.

Unfortunately, absent a few glowing examples (peregrine falcon, bald eagle) the Endangered Species Act is only capable of keeping species on life support—the Act is simply not constructed in such a way to recover species that occur on other than federal land. Federal officials can take recovery actions on public lands and the law includes prohibitions on take that apply everywhere. But neither of these will meet

the most pressing need for active conservation and management measures performed on privately-owned land.

In fact, EDF points out that in some cases the Endangered Species Act might actually contribute to the further decline of species and impede collection of information on the status of listed species—the “shoot, shovel, shut up” approach to wildlife management. The Fish and Wildlife Service is unable to ascertain the status of over half the species found exclusively on private land, perhaps because many landowners fear the result if they allow conservation officials onto their land to assess how endangered species there are faring.

The Fish and Wildlife Service has implemented a “safe harbor” policy that provides landowners some assurances that they will not be penalized for activities that attract endangered species to their property. However, many management activities impose costs on individuals that are, perhaps, more properly shared by all Americans.

Am I proposing that we provide a tax break for complying with the law? No, I feel strongly that we not pay people to comply with the law. But, where a landowner is willing and able to take steps to restore and manage a species’ habitat, actions which are above and beyond what the law requires, the public should share in the cost of restoring public trust resources. Frankly, these are costs that the public already picks up for management activities on Federal lands.

Changes in the federal tax code are the most efficient way for the public to subsidize these activities. To pay federal estate taxes, the inheritors of large land holdings often are forced to sell, subdivide, or develop the property, resulting in the loss of wildlife habitat. In cases where the property could be managed to benefit endangered species, the heirs should be given the opportunity to defer part of the estate taxes by entering into a management agreement with the Department of the Interior. Also, as currently written, the federal tax code seldom allows landowners to deduct the costs associated with maintaining or restoring the habitats of endangered species (e.g., prescribed burning, weed control, etc.). Were landowners allowed to claim a tax deduction or credit for these costs, more of them might be inclined to undertake such steps.

Given the success of using tax incentives to encourage landowners to donate property or conservation easements to charitable groups, I feel strongly that a similar measure of success would come from allowing similar tax breaks for endangered species management activities. We are all familiar with the deeply divided debate over how best to reform the Endangered Species Act that has made reauthorization nearly impossible. We need to change landowners perception of what it means to find an endangered species on their property. Right now, it is a liability. Unless we make a change, species, and the public, will continue to lose.

Chairman HOUGHTON. Thanks very much, Mr. Gilchrest.
Now, the star of the Ways and Means Committee: Mrs. Johnson.

STATEMENT OF HON. NANCY L. JOHNSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mrs. JOHNSON. Thank you very much, Mr. Houghton. And I thank the Subcommittee, on which I have served for many years, for having this hearing. I believe it is extremely important to look at the fact that our Tax Code is not balanced, and discourages investment in the very areas where we need it most, and encourages it in the areas where we should not be encouraging it.

At this particular time, we have a tremendous opportunity. The COPS grants have made our cities safer, without question. The Weed and Seed Program, that has been in place now for about 15 years, has begun to deal with some of the urban problems of demolition and neighborhood problems and replacing old problems with new economic growth opportunities. So there is a combination of factors. Welfare reforms impact on small cities, and HUD’s new flexibility.

There are so many things that are now working for the rehabilitation and the revitalization of at least small urban areas—but I think neighborhoods in our big cities as well—that we really have to move to make the Tax Code more city friendly, more development friendly of our urban areas, and less a force for eating up valuable, high quality, open space land or agricultural lands.

So I would like to just testify in support of three bills that address themselves to this imbalance in our Tax Code. The first would expand the current deduction for brownfields remediation, the second would allow a deduction for the demolition of certain industrial sites, and the third would increase the deduction for land donations—all to rectify the balance in our Tax Code that discourages urban development and encourages urban sprawl into rural areas.

First of all, to the expansion for the deduction for brownfields: You know, current law allows you to get a deduction if you are in an empowerment zone. Well, in my hometown, it means that there are a few blocks where you can get a deduction, but at the same kind of sites across town, you cannot get a deduction. And all of these sites need to be cleaned up.

Talk about urban-rural disadvantages. You know, a brownfield site in a small town that may have only one or two parcels that could possibly attract a new business with jobs is just as much of a problem as a brownfield site in a city. But because they are rarely in these empowerment zones, they do not get the benefit of current law. So we need to allow that deduction for all brownfields, whether they are in an empowerment zone or whether they are not in an empowerment zone. They are the same environmental problem, and it is the same disinvestment to development.

The places where there are brownfield sites are the older manufacturing communities of the Nation, and they are the ones that served us well and can only serve again with clean-up. So it is very important that we look at the disadvantage that we have put those communities at.

Second, in order to get that deduction you often have to be at a 20 percent poverty income index. Well, in New Britain we only have 12.5 percent, but we have a lot of people just above that poverty index. But the way we have written this law disadvantages the very small urban communities that have lots of old manufacturing land, lots of old degraded territory that, once rehabilitated, can bring development to where the infrastructure to support that development is, the transportation and so on. To do that right now, when streets are now safer in these cities, will give us a tremendous opportunity to grow business exactly where we need to grow it.

In our state, we have between 622 and 942 brownfields. Now, there is a big variation in number, because no town wants to acknowledge that a site is a brownfield and get that bad publicity, if they can possibly avoid it, because there are so few resources to clean up. So this is really an urgent matter for communities of all sizes.

The U.S. Conference of mayors estimates that there are 19,000 brownfields representing 178,000 acres. If we could encourage development on those 178,000 acres, just imagine the amount of open

space, the amount of fertile land, that we could protect from development.

If we further couple the brownfields relief with a second bill that I have introduced to make it easier to demolish old buildings, then we will really encourage that redevelopment in the cities. In my legislation, my demolition incentives have been developed in a way that protects buildings of historic significance, including residential buildings of historic significance.

And last, let me just point to my third bill in the package, which does a better job of rewarding people who are willing to donate their land for preservation. You all know the problems the development rights programs in the States are running into. They are very expensive. States are not funding them as well as they used to. We are not funding them at all. We used to fund, put some money in that direction.

And so we do need some new vehicles whereby people with large farms can donate them for preservation and realize some benefit to themselves and their heirs, some ability to justify that decision, some ability to have an income source that will support them during that period of transition.

So my legislation would increase from 30 to 50 percent of their income the deduction they could receive in any current year until the full value of the land is realized, whether that takes 5 years or more. The current law is only 5 years.

So this package of bills would go a long way. Incidentally, I should mention that that current legislation that allows the deduction only allows it if you are within 25 miles of a metropolitan statistical area, a national wilderness area, or a national park, or 10 miles from an urban park. Well, this includes all of Connecticut, so it does not make any difference to me. It excludes most of the Midwest. So that is where many of the big open spaces remain. And we are really shooting ourselves in the foot as a nation to continue to have that restriction.

Our goal should be to encourage development where there is the infrastructure to support business and where we can reuse old lands and create healthy communities, and to discourage urban sprawl, strip malls, and all those things that have so compromised both the aesthetic appeal and the integrity of our small towns. Thank you very much.

[The prepared statement follows:]

Statement of Hon. Nancy L. Johnson, a Representative in Congress from the State of Connecticut

I would like to begin by thanking Congressman Amo Houghton for convening this hearing. As well as thank my colleague Mr. Blumenauer for co-sponsoring my three bills about which I have come to testify today. I would also like to acknowledge some of the groups who will testify later in the hearing with whom I have worked closely in developing my proposals, including representatives from the Realtors and the Nature Conservancy.

As the former Chairman of the Oversight Committee, I too discovered what I believe Mr. Houghton has, that our tax code unfairly encourages development of land that is vital to our conservation efforts. While Congress often uses the tax code to promote certain activities, we haven't used it properly to promote land and wildlife conservation.

My state of Connecticut, like most of its fellow New England states, is known for its historical beauty. With farms and homes dating back to our revolutionary days sprinkled across the state and its many beautiful farmlands and open spaces, it takes visitors through a tour of our country's past. However, like so some many

communities across the country, we have seen an alarming amount of farmland and greenspaces lost to development. More and more strip malls, shopping plazas and housing complexes are replacing productive farms and valuable open spaces.

A particularly disturbing aspect of the “sprawl” problem is that most of our cities have the infrastructure, public transportation and buildings to meet the needs of new businesses. Yet most new businesses choose to develop outside of the urban centers.

There are obviously a variety of causes for this move away from our cities, including local zoning, safety and parking problems and development costs. But I do not believe that our tax code should be one of those causes. I have introduced three pieces of legislation to first expand the current deduction for brownfield remediation, allow a deduction for the demolition of certain industrial sites and increase the deduction for land donations. Our tax code unfairly encourages development outside of our urban centers absorbing our valuable land, and discourages development in the very areas that we need to grow businesses.

Under current law, our tax code provides a deduction of environmental remediation costs for a brownfield if it is one of the EPA’s designated brownfields, within an area that has 20 percent poverty or is contained within an Empowerment Zone.

While I certainly support allowing the deduction in these areas, it is needed by all brownfields in all parts of the country. For instance, the last available poverty rate for New Britain is 12.8 percent in 1990. That is a staggering number although it doesn’t meet the 20 percent requirement for a deduction. Once the manufacturing hub of Connecticut, New Britain is now struggling to keep jobs and bring in new businesses. Encouraging the reuse of any city business plots is far preferable to pulling the same acreage out of agriculture and into development.

Connecticut’s General Assembly published a report in December, 1998 detailing the state’s brownfields renewal efforts. The state uses the Environmental Protection Agency’s definition of brownfield which is an abandoned, idled or underused industrial and commercial property where expansion or redevelopment is complicated by real or perceived environmental contamination. The state found, after surveying its towns, that there are between 622 and 942 brownfields in the state. The large gap in the count is in part due to some cities hesitancy to label a site as a brownfield if the contamination is only perceived.

The United States Conference on Mayors has done a great deal of work on Brownfields research and advocacy. In its annual survey of cities, 180 cities responded that they had a combined total over 19,000 brownfields representing over 178,000 acres of land. Imagine how many farms we could save, open spaces we could preserve or parks we could build from the land we could save from development by encouraging the clean-up of those 178,000 acres?

This deduction certainly isn’t going to inspire the clean-up of all of the sites. But for a developer on a very tight budget, being able to expense the clean-up costs may be just the amount of savings needed to redevelop a site in the city rather than develop a brand new one in the suburbs.

As the Connecticut General Assembly states in its report:

The price someone is willing to pay for a site is based on its cost relative to the return the owner expects to receive from whatever activity is undertaken on the property. In the case of a brownfield, the cost of the site includes the expenses associated with the remediation of the property. In many cases, the cost of remediating a brownfield will be greater than the cost of adding infrastructure to a comparable clean site.

Further, when the economy takes a downturn, the expected revenue from the potential use of the land will decline thus making remediation a less attractive option as their chances of recouping those expenses diminish.

There are also sites for which clean-up is not an appropriate response but demolition may be. I have introduced legislation to allow a developer to expense the cost of taking down a building with protections built in for buildings of historical significance, including residential buildings. While the cost of demolition may not be determining in many cases, it can be the difference between developing an existing site or using an undeveloped piece of land in the suburbs.

Providing incentives for developers to reuse already developed sites is only half the battle. We must also make donating land a more financially palatable option compared to selling it to the highest bidder.

During our last national election, there were over 200 ballot initiatives proposed to preserve open space. States like Connecticut and New Jersey have embarked on major initiatives to either buy, or provide grants for the purchasing of land for conservation or recreation.

In addition to these popular state initiatives, more must be done to encourage those who are land rich to donate that land to a nonprofit organization for conservation purposes or even a government agency. My legislation would increase the current deduction from 30 percent to 50 percent of their income until the full value of the land is realized rather than the current 5-year limit.

Further, language was included in the Taxpayer Relief Act to permit executors to donate land for a reduction in estate taxes. However, the proposal is so complicated that it is rarely used. Adjustments were made through the IRS Reform bill but not enough. In order to qualify, the property in question must be within 25 miles of a metropolitan statistical area, a National Wilderness Area or National Park, or 10 miles from an urban park. While all of my home state of Connecticut is included, most of the Midwest is not. My bill would eliminate the geographic requirement. It should be noted that the Senate version of this year's tax bill, increased the geographic boundaries to 50 miles from a metropolitan statistical area and 25 miles from an urban park. My bill also makes other changes to clarify the language and eliminate restrictions on the value of the land.

In closing, it is important not to limit choices for our constituents or dictate to where they should live or work. We do, however, have a responsibility to help them grapple the issues affecting their daily lives and sprawl is definitely one of those. Through some very simple tax measures we can provide incentives to developers to redevelop existing sites providing consumers and home-owners more options. We can give back a little in the form of a tax deduction to those who sacrifice high profits that come from selling their land to those who instead donate for the good of us all. The tax code should promote responsible development and environmentally friendly uses of our lands and currently it does not do that. My three bills are a small step in the path to a better, more responsive tax code.

Chairman HOUGHTON. Thank you, Mrs. Johnson.
Mr. Pitts, good to see you.

**STATEMENT OF HON. JOSEPH R. PITTS, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF PENNSYLVANIA**

Mr. PITTS. Thank you. Mr. Chairman and Members of the Subcommittee on Oversight, thank you for allowing us to testify on this important issue.

As we all know, increased development pressures have had a drastic effect on farmland throughout the United States, especially in the Northeast Corridor. We have seen a sharp drop in our country's farm acreage. In my State of Pennsylvania alone, farm acreage has dropped from 9 million acres in 1980 to 8 million in 1990, and the numbers continue to decline. Since 1950, the Commonwealth of Pennsylvania has paved over a land mass equal in size to the entire State of Connecticut. Today in my congressional district, made up of Lancaster and Chester Counties, losses around 2,000 acres of farmland each year to development occur. That figure could rise rapidly in coming years if the land owned by retirement-aged farmers does not remain in farming.

Recently, one of my local extension agents asked, "Could Lancaster County, the home of the Amish, become the next Los Angeles?" With the aging trend coinciding with the years of depressed milk prices and escalating land values, he believes this is a possibility. He informed me of the strong agricultural heritage Los Angeles had before development. In 1944, Los Angeles County ranked No. 1 in the Nation in total agricultural production, at \$129.4 million. Lancaster ranked 15th, at \$47 million. In 1992, Los Angeles County ranked 92d nationally in agricultural production. Lancaster

County ranked 13th—although we are No. 1 in non-irrigable products.

To combat this threat to Pennsylvania's economy and quality of life, the Pennsylvania Agricultural Conservation Easement Program was developed. This program enables State and county governments to purchase easements, sometimes called "development rights," from owners of prime farmland. It was passed into law in 1988, and as of August 30, 1999, 1,140 farms in the Commonwealth of Pennsylvania have been preserved. That is 142,000 acres. Roughly \$277 million of State and local funds have been spent to purchase these easements. Implementing such farmland preservation programs is not only popular in Pennsylvania, a number of States are enrolling farms in similar programs.

Please allow me to explain these programs for the record. Farmland preservation programs are voluntary programs in which a farm owner foregoes his rights to sell the farmland for development purposes and enters into a legally binding covenant. In this covenant, the owner agrees to keep the land under cultivation for the life of the farm. In return, the owner receives a one-time payment from the State or local government. Often, the payment is the difference between the agriculture value and the development value of the land. The land can never be used for non-agricultural purposes, such as housing developments. These restrictions affect all future owners of that land, and can never be reversed. It is important to note that farmers who sell their development rights still own and control every other aspect of their land.

Mr. Chairman, I believe that the Federal Government needs to do its fair share to preserve our precious farmland. That is why I introduced the Open Space Preservation Act, legislation that was originally introduced by my predecessor, Congressman Bob Walker. The Open Space Preservation Act is very simple: It repeals estate and capital gains taxes on all farms that are preserved in farmland preservation programs. Rather than creating more Federal programs and mandates for land use, I believe that tax relief is a more effective and less intrusive way to protect the environment and curb urban sprawl.

Because of the burden of estate and capital gains taxes, farmers are often forced to sell their farms to developers. The punitive estate tax has forced the sale of thousands of family-owned farms in recent decades—many times, just to pay the estate taxes. I strongly believe that families should not be forced to visit the undertaker and the tax man in the same week. By enacting the Open Space Preservation Act and repealing the estate tax on all farms that are preserved, younger generations are going to be able to stay in farming, rather than hand over 55 percent of the legacy a loved one intended for his family.

By repealing capital gains taxes on preserved farms, our farmers would be able to save for their retirement, their children's education, or a better quality of life. And this would be extremely helpful for owners of preserved farms. If the Open Space Preservation Act were enacted, a farmer could finally sell his farm to another farmer, without paying the exorbitant capital gains tax.

I might mention, when they sell part of the farm to pay taxes, they reduce their asset base. Farmers do not have a large cash

flow, and they have to get loans. And this asset base going down limits the loans that they can get for operation.

Mr. Chairman, I can assure you from my experience in the Pennsylvania State legislature that farmers greatly appreciate the opportunities that our Commonwealth's farmland preservation programs have provided. As a whole, farmers are proud of their profession. They like farming. They want to continue to farm as long as they can. At the same time, they realize that agriculture is a tough profession in which to be economically successful. Many farmers look upon their farm as their means for retirement security.

Preservation programs nationwide have allowed farmers to receive reasonable compensation for their land, while allowing them to continue in agriculture. The proceeds from their easement sales may be used to purchase additional farmland or farm equipment, or may be just for a retirement nest egg. In any event, farmland preservation has provided farmers a greater opportunity to be financially secure and continue their profession.

Although the compensation provided from agriculture conservation easement sales is welcomed, it is not the only reason farmers participate in the program. If money were the only motivator, farmers would sell their properties outright to a developer and receive a much higher price than the preservation program.

Why would farmers settle for less than full price for their farms? I believe the answer is simple. While farming is a business, farmers do not make decisions on their farm operations strictly on the basis of dollars and cents. Farmers see a real value in the preservation of their farm and farming business for future generations. Farmers want their children to continue the family farm—if not their children, then individuals in succeeding generations who are as committed to farming as they are.

Mr. Chairman, even with Pennsylvania's success in farmland preservation, much more needs to be done, not only to preserve farmland, but to preserve the economic integrity of agriculture. It is my hope that this Committee will lead the effort to, No. 1, provide meaningful tax relief and, No. 2, assist state- and local-administered farmland preservation programs.

The Open Space Preservation Act does just that. It not only preserves our open spaces, but provides real tax relief to free hard-working families from the fear of losing their farms. Thank you, Mr. Chairman.

[The prepared statement follows:]

Statement of Hon. Joseph R. Pitts, a Representative in Congress from the State of Pennsylvania

Mr. Chairman and members of the Subcommittee on Oversight, thank you for allowing me to speak before you on this very important issue. As we all know, increased development pressures have had a drastic effect on farmland throughout the United States, especially in the Northeast Corridor.

We have seen a sharp drop in our country's farm acreage. In my state of Pennsylvania alone, farm acreage has dropped from nine million acres in 1980 to eight million in 1990. And the numbers continue to decline. Since 1950, the Commonwealth of Pennsylvania has paved over a land mass equal in size to the entire state of Connecticut. Today, my Congressional District, made up of Lancaster and Chester Counties, loses around 2,000 acres of farmland each year to development. That figure could rise rapidly in coming years if the land owned by retirement-aged farmers does not remain in farming.

Recently, one of my local extension agents asked, could Lancaster County, the home of the Amish, become the next Los Angeles? With the aging trend coinciding with years of depressed milk prices and escalating land values, he believes this is a possibility. He informed me of the strong agricultural heritage Los Angeles had before development. In 1944, Los Angeles County ranked #1 in the nation in total agricultural production at \$129.4 million; Lancaster ranked 15th at \$47 million. In 1992, Los Angeles County ranked only 92nd nationally in agricultural production; Lancaster County ranked 13th.

To combat this threat to Pennsylvania's economy and quality of life, the Pennsylvania Agricultural Conservation Easement Program was developed. This program enables state and county governments to purchase easements (sometimes called development rights) from owners of prime farmland. It was passed into law in 1988, and as of August 30, 1999, 1140 farms in the Commonwealth of Pennsylvania have been preserved. That's 142,000 acres. (Roughly \$277 million of state and local funds have been spent to purchase those easements.) Implementing such farmland preservation programs is not only popular in Pennsylvania—a number of states are enrolling farms in similar programs.

Please allow me to explain these programs for the record. Farmland preservation programs are *voluntary* programs, in which a farm owner foregoes his rights to sell the farmland for development purposes and enters into a legally binding covenant. In this covenant, the owner agrees to keep the land under cultivation for the life of the farm. In return, the owner receives a *one-time* payment from the state or local government. Often the payment is the difference between the agricultural value and development value of the land. The land can never be used for non-agricultural purposes, such as housing developments. These restrictions affect all future owners of that land and can never be reversed. It is important to note that farmers who sell their development rights still own and control every other aspect of their land.

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dren to continue the family farm—if not their children, then individuals in succeeding generations who are as committed to farming as they are.

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Chairman HOUGHTON. Thank you, Mr. Pitts.

Mr. COYNE. Mr. Chairman?

Chairman HOUGHTON. Yes?

Mr. COYNE. Our colleague from California, Pete Stark, had a statement he would like to be included in the record.

Chairman HOUGHTON. Absolutely, without objection.

[The information was not available at the time of printing.]

Chairman HOUGHTON. So, Mrs. Johnson, gentlemen, thank you very, very much for being part of the panel.

Now I would like to call a second panel: Mr. Burman, who is Deputy Assistant Secretary of Tax Analysis at the Department of the Treasury; Mr. Reid Wilson, Chief of Staff at the Environmental Protection Agency; and Hon. Dan Reicher, Assistant Secretary, Energy Efficiency and Renewable Energy, of the Department of Energy.

All right. Mr. Reicher, would you begin your testimony?

STATEMENT OF HON. DAN W. REICHER, ASSISTANT SECRETARY, ENERGY EFFICIENCY AND RENEWABLE ENERGY, U.S. DEPARTMENT OF ENERGY

Mr. REICHER. Thank you, Mr. Chairman and Mr. Coyne and Members of the Subcommittee. I am very pleased to have the opportunity to testify today. And I am going to discuss very briefly the economic and environmental benefits that can accrue to the Nation through energy efficiency and renewable energy technologies. My colleague, Mr. Burman, will discuss how tax incentives can spur the use of energy efficiency and renewable energy technologies.

Mr. Chairman, I have a very simple message today: While we have made great progress over the last two decades in cutting the costs and improving the performance of renewable energy and energy efficiency technologies, we have some distance to go before solar, wind, biomass, and geothermal power, and highly efficient buildings, vehicles, and industrial processes are fully competitive in the U.S. market.

Success, Mr. Chairman, requires sustained government commitment to research and development, and support of policies, particularly targeted tax incentives, the subject of today's hearing. Let me quickly give you some examples of our progress to date, and the remaining challenges.

Wind power in 1980 cost 40 cents per kilowatt-hour. Today, it is one-tenth of that. With this dramatic cost reduction, and the availability of the Federal wind production tax credit, we have seen substantial growth of U.S. wind power capacity.

Wind, however, is still not fully competitive in the U.S. with fossil fuel power plants. With continued progress in R&D and renewal of the wind production tax credit, as proposed in Mr. Matsui's bill, we see this technology competing fully and successfully in the early part of the next decade. In fact, the administration's goal is to obtain 5 percent of U.S. electricity from wind by 2020.

As another example, electricity-producing solar panels in 1980 produced power at more than \$1 per kilowatt-hour. Today, the cost is about one-fifth of that figure. As a result, solar electric, or photovoltaic, systems are beginning to be installed in substantial numbers on roofs across the United States. However, again, we still have a good distance to go to cut the cost of these panels to under a dime per kilowatt-hour. In conjunction with further R&D advances, tax incentives for solar energy, like those in the Matsui bill, will help build a larger market for solar energy, and cut costs.

In the area of biomass, we have also made great progress, driving the costs of fuels and power derived from forest and agricultural crops and waste down to a fraction of what they were in the past. But again, we have some distance to go.

Tax incentives can definitely help, but I would note that the so-called "closed loop approach" in current law has spurred no new biopower development in the near term. An open loop approach, that the Matsui bill moves toward, would be far more effective.

In the area of the efficiency of our buildings, we have long known how to build a more efficient home or office. The issue has been how to do it cost-effectively. Through government-industry R&D partnerships, along with codes and standards, we have vastly improved the efficiency and lowered the cost of heating and cooling systems, appliances, windows, and insulation.

We have also improved the system efficiency of whole buildings. But again, we have some distance to go. Additional R&D, tax incentives like those contained in Mr. Matsui's bill, and more robust consumer information will quickly lead us to an area of vastly reduced energy bills and pollution in connection with buildings.

In the area of industrial energy efficiency, the use of energy in our most energy-intensive industries like steel, aluminum, pulp and paper, glass, let me give you a startling statistic. On average in the United States, it takes three units of fossil or nuclear derived energy to produce one unit of electricity; the other two units being lost generally as heat through cooling towers, discharge pipes, steam vents, and by other means. The amount lost is about equivalent to Japan's entire annual energy use, the amount lost from our energy production system.

Combined heat and power systems link electricity generation and the use of waste heat in industrial and commercial settings, raising generation efficiencies from about 35 percent to 65, 75, even 85 percent levels. These systems are making inroads in this country; but again, we have some distance to go. And continued R&D, changes to environmental electricity regulations, and targeted tax incentives can help.

Last, we have lost ground in recent years in the fuel efficiency of our vehicles, particularly with the rise of light trucks and sport utility vehicles. Under the Partnership for a New Generation of Vehicles, the U.S. Government and the Detroit auto companies have

made good progress toward our joint goal of an 80-mile-per-gallon, five- to six-passenger production prototype vehicle by 2004.

We are pursuing hybrid electric-gas, electric-diesel, and fuel cell automobiles. Meanwhile, some Japanese companies are introducing two- and four-passenger hybrid vehicles in the U.S. market over the next several months. Tax incentives like those in Mr. Matsui's bill, in combination with additional R&D, will accelerate our progress to an era when 60-, 80-, or 100-mile-per-gallon vehicles are commonplace. Success in this endeavor is likely to be highly important to the future competitiveness of our U.S. car companies.

In conclusion, we have made a great deal of progress in energy efficiency and renewable energy technologies over the last few decades, but we have some distance to go. Congress' support, through targeted tax incentives, in combination with aggressive R&D, will hasten the day when these technologies and the economic and environmental benefits that come with them are commonplace in the United States. Thank you, Mr. Chairman and Members of the Subcommittee.

[The prepared statement follows:]

Statement of Hon. Dan W. Reicher, Assistant Secretary, Energy Efficiency and Renewable Energy, U.S. Department of Energy

Mr. Chairman and Members of the Subcommittee, I am pleased to have the opportunity to appear before you to discuss the many economic and environmental benefits that can accrue to the Nation through continued support of energy efficiency and renewable energy technologies. Although we at the Department of Energy have a strong interest in tax incentives to spur the use of clean energy technologies, my colleagues at the Department of Treasury have provided testimony on current tax proposals since this lies within their jurisdiction. However, I want to express my appreciation to Congressman Matsui, and to Representatives Lewis and Neal from this subcommittee for their introduction of H.R. 2380, a bill which incorporates many of the Administration's proposed tax incentives for renewable energy and energy efficiency. These tax incentives will encourage the use of energy efficiency and renewable energy technologies thereby advancing U.S. environmental quality and economic growth.

Today, I want to share with you some of the exciting progress that we have made in energy efficiency and renewable energy over that last 20 years. Twenty years ago renewable energy was generally produced at a very high cost and in an inefficient manner. Advanced power delivery system components and high temperature superconducting materials did not even exist, and the alternative transportation fuel sector was very immature. We have come a long way although we have some distance to go before many of these technologies reach full competitiveness in the U.S. market. Tax incentives can accelerate this progress.

For example, the cost of electric power from wind turbines in 1980 ranged from \$0.30–\$0.40 per kilowatt-hour (kWh). Through aggressive R&D by Department of Energy's Office of Energy Efficiency and Renewable Energy (EERE) and its industry partners on wind turbine aerodynamics, materials development and computer-aided design, we have been able to reduce the costs to between \$0.04 and \$0.06 per kWh. At this price, wind systems are beginning to enter the marketplace, expanding from the early California windfarms to include States ranging from Vermont to Alaska and from Minnesota to Texas. Wind energy systems are also poised to expand into other Great Plains and Northeastern locations, such as Oklahoma, Wisconsin the Dakotas, Maine, and New York. We are also working on Next Generation Turbines to reduce the cost of electricity from wind even further—to as low as 2½ cents per kWh by 2002. This cost will enable wind to compete fully across the United States.

As another example, the first commercially-available photovoltaic (PV) systems in the early 1980s produced power at a cost of more than \$1.00 per kWh. Today, PV systems are delivering electricity about \$0.20 per kWh—depending upon the specific technology—making clean, reliable PV systems competitive in many remote and on-grid sites here in the U.S. and around the globe. By 2010 we project PV-generated electricity will drop to \$0.10 per kWh. At this price solar would be a competitive power option in many urban and suburban areas where transmission and distribution systems are constrained and also in rural areas across the entire United States

where distribution costs are too high. Improved materials manufacturing techniques and energy conversion improvements—most supported by DOE and its laboratories—have made and will make these cost reductions possible and have facilitated the resurgence of the U.S. PV industry as the world's leader in this \$1.2 billion global industry, which grew 95 percent between 1995 and 1998.

With large manufacturing plants in Virginia, Maryland, California, Michigan, Delaware and Massachusetts, the solar industry is a growing part of the U.S. economy. However, global competition is fierce. While both domestic PV production capacity and U.S. product sales are up, the U.S. risks losing its world market leadership, having dropped from 44 percent in 1996 to 40 percent in 1997 to 35 percent in 1998. Our potential loss of this growing market is exacerbated by a Japanese PV budget that is three times what we spend in the U.S. (\$240 million in Japan in FY 1999 vs. \$72 million in the U.S. in 1999).

We are also making tremendous progress in making solar water heaters an economically attractive option for families across the U.S. by 2003. We are developing a new generation of solar water heaters that is 50 percent less expensive than today's technology (from \$0.08/kWh to \$0.04/kWh delivered energy cost). This would enable a family to buy a solar water heater for about \$1,000 and see their investment returned in energy savings within four years.

In our geothermal program, we are working with U.S. industry to establish geothermal energy as a sustainable, environmentally sound, and economically competitive contributor to the U.S. and world energy supply. These joint efforts sponsor research and development that leads to advanced technologies to improve reliability, reduce environmental impacts, and lower costs of geothermal energy systems. Attainment of the five goals of the Geothermal Energy Strategic Plan for 2010 which have been endorsed by industry will: supply the electrical power needs of 7 million U.S. homes; provide the heating, cooling, and hot water needs of 7 million U.S. homes; meet the basic energy needs of 100 million people in developing countries; ensure that the United States continues to lead in geothermal technology; and develop new technology to meet 10 percent of U.S. non-transportation energy needs.

Production of ethanol is also on track for widespread vehicle use at competitive prices. To compete with today's inexpensive gasoline, our biofuels program focuses on the development of facilities that make ethanol from agricultural and forest wastes and dedicated crops. Construction recently began in Jennings, Louisiana, on a "first-of-a-kind" production plant with 80 percent industry cost-sharing that will produce ethanol from sugarcane waste. This 20-million gallon facility is scheduled to come on-line in the year 2000 with initial ethanol production costs of \$1.00 per gallon, putting us well on-track for the program's 2010 production cost goal of less than \$0.75 per gallon. We are also supporting the development of demonstration plants in California and New York that will use rice straw and municipal solid waste to produce ethanol. Additionally, we are studying ways to add facilities to existing corn-ethanol plants to produce ethanol from corn stalks and leaves. R&D on ethanol technology is very important to our future energy security. By 2020 net U.S. oil imports, which accounted for about 50 percent of domestic petroleum consumption in 1998, will grow to 65–70 percent of domestic petroleum consumption—with an annual oil bill ranging from \$130 billion to more than \$180 billion in current dollars.

While we are making tremendous strides in these technologies, we still have much work to do. The competitive revolution in the power generation sector has led to drastic decreases in the price of power from new sources of generation. For example, natural gas-fired combustion turbine technology produces electricity for about \$0.03 per kWh. Given the currently low domestic market prices of fossil fuels, market penetration of renewable energy technologies is occurring more quickly in remote locations domestically and also overseas where the cost of electricity is generally much higher than in the U.S. Large-scale penetration of the U.S. electricity market requires further technological progress and supportive policies such as tax incentives and federal electricity restructuring legislation.

In our other major program area, the investments in energy efficiency made by the Department of Energy and its private sector partners have had a profound effect on economic development. They have produced real results that are helping U.S. industries cut costs and more successfully compete in the increasingly tough global marketplace. In industries facing severe international competition—from steel to forest products to chemicals—EERE technologies are being used to lower production costs—helping to keep these vital industries competitive. In the automobile sector, EERE technologies will not only result in the 80 mile-per-gallon family sedan and a more competitive domestic auto industry in the next decade, but have already contributed to the efficiency and competitiveness of many models on the road today. In buildings, EERE technologies in lighting, windows, building design, heating, cooling

and materials have increased the efficiency of U.S. buildings from California to Connecticut. And as our nation embarks upon a new construction boom, these technologies will position builders to offer even greater efficiency in both new construction and renovation of homes, offices and schools. For example, the 6,000 new schools to be built and tens of thousands of schools to be renovated in the next decade present a key opportunity for energy savings—which can mean more money for teachers and textbooks.

Our programs have a compelling record of success—in transportation, we are meeting our industry/government partnership goals and are on schedule to meet the goal of the ten-year Partnership for a New Generation of Vehicles (PNGV): the 80 mpg production prototype family sedan. In addition, the PNGV effort has led to significant engine and materials technologies being incorporated into current vehicle models. Also, we have built prototype diesel engines for small trucks that could be twice as efficient as current sport/utility vehicle engines with very low emissions. Finally, our work has helped make possible large-scale deployment of alternative fuel vehicles—such as natural gas cars and buses.

Through the Industries of the Future program, we are working with the most energy intensive U.S. industries to develop technologies that cut their energy requirements, emissions and production costs and thereby improve their competitiveness. For example, in the steel industry, we have developed and demonstrated a portfolio of technologies that likely will save over \$8 million per year at Bethlehem Steel's Burns Harbor, Indiana, plant and could save nearly \$200 million per year if implemented industry-wide. We have also developed a wide range of crosscutting technologies that are being applied across many industries, for example, efficient motor and steam systems, advanced materials and combined heat and power technologies. Finally, we have nearly completed the development of our revolutionary high-efficiency, low-emissions natural gas turbine for industrial applications. These technologies cut production costs in the industries America needs to stay competitive—such as petroleum production, forest products, agriculture and mining.

In buildings, EERE has supported technologies that have saved consumers literally tens of billions of dollars to date in energy costs. In Building America, we have demonstrated to builders from Pittsburgh to Los Angeles that they can build 50 percent more efficient houses without increasing their construction cost. Through Rebuild America we have partnered with communities across the nation to continue energy efficiency retrofits in 400 million square feet of commercial buildings that will save over \$140 million per year in energy costs. We have developed a revolutionary natural gas chiller that significantly increases building cooling efficiency. Finally, we have reinvented the appliance efficiency standards process to increase coordination—and the likelihood of consensus—with industry and other affected stakeholders. As with our renewable technologies we have made a great deal of progress on energy efficiency but our challenge in the next decade is to take these technologies and fundamentally transform the way we produce and use energy. Again, tax incentives can accelerate this progress.

Many of the technologies I've discussed today are included in H.R. 2380. Enactment of tax incentives and a strong, continuing federal commitment to research, development and deployment will further enhance the technological benefits to be gained. By spurring the use of renewable and energy efficiency technologies, we are investing in the long-term health of our economy and our environment. Thank you for the opportunity to testify.

Chairman HOUGHTON. Thank you very much, Mr. Reicher.
Mr. Wilson.

**STATEMENT OF D. REID WILSON, CHIEF OF STAFF,
U.S. ENVIRONMENTAL PROTECTION AGENCY**

Mr. WILSON. Mr. Chairman and Members of the Subcommittee, thank you very much for this opportunity to discuss Clinton administration proposals to use tax incentives to preserve open space, spur economic redevelopment through brownfields clean-up, and promote more livable communities.

Across America, communities are searching for ways to improve their quality of life. In 1998 on the election day, there were over

240 green ballot initiatives across the country. Over 150 of them passed. And they authorized more than \$7.5 billion to try and make those communities more livable.

This Administration has proposed creative approaches to complement these State and local efforts, and I would like to address two of those today; namely, Better America Bonds, and the Brownfields Tax Incentive.

One principle is key to both of these proposals, and that is that the appropriate role for the Federal Government is to provide tools and resources and information to communities, but not to interject itself into the decisions that these communities make. This is about empowering communities, not dictating decisions to them.

The Better America Bonds program as embodied in H.R. 2446, would provide States, tribes, counties, and cities \$9.5 billion in bonding authority over 5 years. And I would like to thank Congressmen Matsui and Doggett, though they are not here, for their leadership in sponsoring that legislation.

There are three general purposes for Better America Bonds. One is to protect open space, so a community could create parks, greenways, and protect threatened farmland. And they could do this either by acquiring title or by purchasing conservation easements.

The second general purpose is for brownfields site assessments and clean-ups. Clearly, there are so many brownfield sites around this country, and we heard from a number of the members this morning about that. There is probably almost never enough money to get to the job of cleaning them all up. And this proposal would provide more funds to do that.

And third, Better America Bonds can be used to improve and enhance water quality. And we are really trying to focus this toward polluted runoff. We are not talking about building sewage treatment plants; we have other programs to do that. This is more about wetlands restoration, planning buffers along streams, buying sensitive land to protect wellheads, things like that.

The thing that is great about this proposal for communities is that it provides them a real bargain. Because this is a tax credit bond, they would not pay interest on the bonds. The bond holder would receive a tax credit, in lieu of the interest they would have received from the community. So it is a deep subsidy to these communities.

And just one example that the Treasury Department has provided is that if you had a \$1 million bond, a tax-exempt bond, a community would have to spend roughly \$100,000 per year to service that debt. Under a tax-credit bond, it is only about \$40,000 per year to service the debt; a savings of about 60 percent. And over the 15-year life of the bond, that adds up to \$900,000 in savings for the community. So we believe this program is a real financial incentive for communities.

Bonding authority would be awarded through a competitive process. We would plan to run this program much like we do our successful Brownfields Pilot Grant Program. In that program, we have provided grants totaling \$60 million to 307 communities. That has leveraged over \$1.5 billion, and it helps support 4,000 jobs.

We have done that without writing a single rule or regulation. And we would want to do Better America Bonds in the same way;

which is a very flexible, easy program to use for communities. There are no rules or regulations. It has easy to follow criteria and guidelines about how they would apply for this bonding authority.

As an example of how this could be used, a city and two surrounding counties, for instance—and we would want to encourage regional approaches—could come to us with a proposal to clean up four brownfield sites in the city, for example, and to restore some wetlands along the stream that separates the city from the counties, and also purchase some land along the stream for parks. So that kind of thing is how Better America Bonds could work.

It is important to say what the program is not. The Federal Government will not buy one inch of land. We will not micro-manage local decisions. It is up to them to decide how they would use the bonding authority.

And this proposal has strong support from the Conference of mayors, the National Association of Counties, the National Realty Committee, the Trust for Public Land, the Garden Club—very broad support. And on the other side of the Hill, there is a bipartisan bill sponsored by Senators Baucus and Hatch.

Now, I have got a yellow light, so I am going to turn to the Brownfields Tax Incentive. We would like to commend this Committee and Congress for passage of the tax incentive in the 1997 tax bill. It has helped level the field between redeveloping brownfield sites and developing pristine greenfield sites.

Under the tax incentive, environmental clean-up costs for properties in designated areas are fully deductible in the year in which they are incurred, rather than being capitalized into the basis of the property. The incentive can reduce the capital cost of these types of investments by up to half. We regard this tax provision as an essential element of a comprehensive brownfields program.

We strongly support H.R. 1630, introduced by Congressman Coyne—and thank you for your efforts on that—because it would make this tax incentive permanent. And by doing so, it would remove a lot of the uncertainty that developers and communities have about if they will be able to find the funding to clean up and redevelop these brownfield sites. And we think a permanent extension is better than another short-term extension, which would again have a sunset provision. Because that again, at some point, will increase the uncertainty that communities face.

One other quick point about the tax incentive is that we have heard from States and others that to make this more broadly available we ought to look at changing the definition of what is a hazardous substance, to include petroleum, asbestos, and lead paint. And we are working with our colleagues at Treasury to see if that is indeed workable. They certainly make some good arguments as to how that would help them clean up brownfields quicker.

So in conclusion, the Administration has put forth these two innovative proposals that provide resources to communities to protect open space, clean up their water, and redevelop economically by cleaning up brownfield sites. And it allows them to do this in a way where they set their own priorities and make their own decisions.

We just want to be there to help them do that. And we look forward to working with the Committee on these proposals in the future. And thank you very much.

[The prepared statement follows:]

Statement of D. Reid Wilson, Chief of Staff, U.S. Environmental Protection Agency

Good afternoon Mr. Chairman and Members of the Committee. I am Reid Wilson, Chief of Staff at the United States Environmental Protection Agency (EPA). I am pleased to provide comment about the Clinton Administration efforts to use tax incentives to preserve open space, spur economic redevelopment through brownfields cleanup, and promote more livable communities throughout America.

Across America, communities are searching for ways to boost economic growth, protect their environment and public health, and preserve a high quality of life. They want to see older neighborhoods revitalized. They want to see their local waters protected. And they want to preserve farmland and green space close to home.

In 1998, according to the Brookings Institute and State Resources Strategies, more than 240 ballot initiatives to preserve open space, protect water quality, and speed brownfields cleanup were considered in communities across the country. More than 150 passed, authorizing \$7.5 billion in state and local spending. These communities were responding, in part, to the astonishing loss of open space that has occurred across the nation. According to the American Farmland Trust, more than 30 million acres of farmland have been lost since 1970. That's like paving over all of Pennsylvania. This loss of land has substantial environmental consequences. For instance, a one-acre parking lot generates sixteen times more runoff than a meadow. This runoff washes toxic chemicals and other pollutants into our waters, lakes and coastal areas, making them unfit for families who want to enjoy them and wildlife that depend on them.

This Administration has proposed creative ways to help communities further their efforts to promote more livable communities. I would like to focus on two of these proposals—the Better America Bonds program and extension of the Brownfields Tax Incentive. A key principle to both of these proposals is that the federal government's appropriate role is to provide tools, resources and information to communities so that they can grow in ways that are best for them, not to interject the federal government into local land use decisions. These proposals are about empowering and assisting communities, not dictating or micromanaging their decisions.

BETTER AMERICA BONDS

The Better America Bonds program, as embodied in H.R. 2446, would provide states, tribes, counties, and cities \$9.5 billion in bonding authority over five years to preserve their open spaces, protect their water, clean up brownfields, and improve their quality of life, in a manner that works best for them.

Better America Bonds can be used for three general purposes. First, State, Tribal and local governments can create or restore parks and greenways, preserve green spaces, and protect threatened farmland and wetlands, either by acquiring title or purchasing conservation easements.

Second, Better America Bonds can be used to fund brownfields site assessments, site cleanups, and provide flexible funding to boost reuse of these contaminated properties. The U.S. Conference of Mayors has pointed to a lack of capital for local governments as the leading barrier to the cleanup and reuse of brownfields. Better America Bonds will supplement existing brownfields grant and loan funding with bond proceeds. This spares green space from development by reusing already developed properties at a time when over 700 acres of open space and farmland are lost per day to development.

Third, Better America Bonds can be used to protect and improve water quality. Rivers, lakes, coastal waters, and wetlands can be restored or protected, stream side corridors can be planted or repaired, and land can be acquired to reduce polluted runoff or protect drinking water sources.

Better America Bonds are structured to provide a deeper subsidy to communities than traditional tax-exempt bonds. In short, they are a great bargain for state and local governments. The bonds are interest-free to communities because the bondholder receives tax credits from the federal government in lieu of the interest they would have received from the community. The Treasury Department and EPA estimate that a community that issues a one million dollar, 15-year, tax exempt bond (at an interest rate of 5.8 percent) would pay roughly \$102,000 per year to service the debt. But a community issuing a tax credit bond would pay only \$46,000 per year into a sinking fund earning interest at the current Treasury rate of about 6.2 percent. That is an annual savings of \$60,000—or about 60 percent. Over the fifteen year life of the bond, the savings add up to \$900,000.

Bonding authority will be distributed directly to States, Tribes, and local communities through a competitive process. EPA plans to administer the Better America Bonds program in consultation with other federal agencies including the USDA, Transportation, and Interior. EPA envisions that the program will be run the same way as our successful Brownfields grants program, which has provided over \$60 million to three hundred communities to assess contamination of brownfields sites and plan cleanup activities. This program has leveraged over \$1.5 billion in redevelopment funds and supports more than 4,000 jobs. All of this has been accomplished without writing a single rule or regulation.

The Brownfields program is popular and easy for communities to use. At the outset, EPA conducted an extensive stakeholder outreach effort to help us shape the application criteria that communities use to apply for grants. As with the Brownfields program, EPA will embark upon a thorough outreach process to receive advice and input from federal agencies and communities to help create the application criteria for Better America Bonds (assuming the program is passed by Congress and signed into law). In fact, this summer, EPA held Better America Bonds listening sessions around the country to solicit advice from a diverse group of stakeholders. We will work closely with communities to ensure that the program is structured in a way that meets their needs. We want to preserve green space, not promote red tape. And, like the Brownfields program, once the criteria are written and applications are received, we will put together a panel of federal agencies with relevant expertise to help review and evaluate applications.

One thing we would like to encourage through Better America Bonds is regional partnerships. For instance, a city and several neighboring suburban counties could submit a joint application to clean up brownfields sites in the city, purchase open space outside the city, and protect drinking water by restoring wetlands along a shared stream. We also want to make sure the program is available to all types of communities—big and small, suburban, rural, and urban.

It is important to emphasize what this program is not. The Federal Government will not purchase one square inch of land; the purpose of the program is to provide resources to communities so that they can implement decisions they believe are in their best interests. Nor will the federal government get involved in local zoning decisions. EPA will not micromanage decisions included in communities' applications for bonding authority. Just as in our Brownfields program we do not tell communities which brownfields sites to assess, we will not suggest which parcels of land to purchase under Better America Bonds. It is up to the community to put together a plan that is best suited to its needs, whether it is brownfields cleanup, water quality protection, open space preservation, or some combination. Finally, this program is not mandatory; it is up to communities to choose whether they want to participate.

BROWNFIELDS TAX INCENTIVE

EPA and other Federal agencies are providing resources and tools to state and local governments to clean up and redevelop brownfields—abandoned, potentially contaminated properties. As mentioned before, EPA's pilot grant program has been extremely successful. In addition, EPA's Brownfields Cleanup Revolving Loan Fund provides funding for communities to move beyond site assessment and on to cleanup. So far, 68 communities are eligible for up to \$500,000 each for cleanup activities. Finally, EPA's Job Training and Development Demonstration Pilot Program has helped create jobs by training workers to perform site cleanups in 21 communities so far.

We would like to commend this Committee and Congress for the passage of the Brownfields Tax Incentive in the last Congress. Passage of the Brownfields Tax Incentive has enabled the federal government to help level the economic playing field between brownfields and previously unused greenfield sites. Under the tax incentive, environmental cleanup costs for properties in designated areas are fully deductible in the year in which they are incurred, rather than being capitalized into the basis of the property. The incentive can reduce the capital cost of these types of investments by more than half. We regard this tax provision as an essential element of a comprehensive brownfields program and hope it can be made a continuing and broad tool for brownfields redevelopment in the future. The Treasury Department estimates that the \$3 billion incentive will leverage \$3.4 billion in private investments and return some 8,000 brownfields to productive use.

West Chester, Pennsylvania provides a good example of how the tax incentive can be used to great advantage. The tax incentive was used there to help a demolition and environmental service company relocate its headquarters onto a brownfields property. The site was in a part of town plagued by a 29.6 percent poverty rate,

well above the 20 percent poverty threshold set in Section 198. The company estimates that 100–200 jobs could be created and that the tax incentive saved nearly \$42,000 in project costs.

Similarly, a company in Portland, Oregon plans the redevelopment of a brownfields located in an Enterprise Community along Portland's waterfront. The waterfront location and large property size made the area perfect for marine-related activities. The federal tax incentive was a key element in the efforts to revitalize a site that laid dormant and derelict within Portland's urban core. If the site is developed as planned, the company estimates that it will generate more than 150 jobs, some of which may be filled by residents in the adjacent community.

Despite these successes, many stakeholders voiced a concern that the geographic requirements are too restrictive. EPA, in response, has developed an internet-based mapping program which will allow taxpayers to determine the eligibility of their properties for Section 198 election. This mapping system has shown us that large and widespread tracts of our inner cities and rural economic corridors are eligible under one or more of the criteria.

Permanent extension of the Brownfields Tax Incentive is critical so that more communities can include it in their set of tools to bring brownfields sites back to vital economic life.

CONCLUSION

The Administration is working hard to develop new ideas and approaches that respond to public concern that we find creative ways to help communities grow according to their own values, maintain their quality of life, and enhance economic competitiveness. This is a challenging task, but innovative tax proposals such as Better America Bonds and extension of the Brownfields Tax Incentive will provide communities with resources they need to protect parks and open spaces, enhance water quality, and return contaminated properties to productive economic use. These programs allow communities to set their own priorities and design for themselves their preferred path toward economic revitalization and environmental protection. We look forward to working with the Committee to define common sense approaches to meet the new challenges that we face today.

Chairman HOUGHTON. Thanks very much, Mr. Wilson.
Mr. Burman.

STATEMENT OF LEONARD BURMAN, DEPUTY ASSISTANT SECRETARY, TAX ANALYSIS, U.S. DEPARTMENT OF THE TREASURY

Mr. BURMAN. Mr. Chairman, distinguished Ranking Member, and Members of the Subcommittee, thank you for inviting me to discuss the Administration's tax proposals to improve the environment and help State, local, and tribal governments to make their communities better places to live and work.

Earlier this year, in the Administration's budget for FY 2000 the President proposed initiatives to help build livable communities for the 21st century. The Liveable Communities Initiative aims to provide communities with tools, information, and resources they can use to enhance the quality of life of the residents, strengthen their economic competitiveness, and build a stronger sense of community.

As part of that initiative, the administration proposed a new financing tool: Better America Bonds. Seven hundred million dollars in tax credits would make available \$9.5 billion in interest-free tax credit bond authority over 5 years to finance investments by State, local, and tribal governments. Those investments preserve green space, create or restore urban parks, protect water quality, and clean up abandoned industrial sites.

The Administration also proposed to make permanent the tax incentive to clean up brownfields and targeted areas, which is scheduled to expire on December 31, 2000, at a cost of \$0.6 billion over 5 years. The Administration's budget also included a \$3.6 billion package of tax incentives over 5 years to encourage energy efficiency, reduce greenhouse gas emissions, and develop renewable energy sources. The tax incentives are part of a larger package of complementary initiatives.

In addition to the \$3.6 billion of tax incentives, the Administration proposed to increase funding for R&D and energy efficient technology and renewable energy, a new Clean Air Partnership Fund to boost State and local efforts to reduce air pollution from greenhouse gases, and \$1.8 billion for global climate change research.

Mr. Wilson has already spoken about the Better America Bonds program. I want to talk about a few of the technical details. The Better America Bonds program is modeled after the existing Qualified Zone Academy Bonds which, after a slow start, have gained widespread acceptance among many of the States. The Federal Government would, in effect, pay all of the interest on Better America Bonds for 15 years, in the form of tax credits to bond holders. Interest exemption is a much more valuable subsidy for governments than the tax exemption for traditional municipal bonds. Mr. Matsui and others have introduced a proposal for Better America Bonds in H.R. 2446 which, as Mr. Wilson mentioned, we strongly support.

In general, the property that governments acquire with the proceeds of Better America Bonds must be available only for public use and use by tax-exempt entities, but not private use. This is for the benefit of communities. The one exception is with respect to remediated brownfields, which could be sold to a private entity for private development, with the sale proceeds made available to repay the principal.

The Administration proposes \$1.9 billion of annual authority to issue Better America Bonds for 5 years, beginning in 2000. The EPA would administer an annual open competition among State, local, and tribal governments for authority to issue these bonds, subject to EPA's guidelines, which Mr. Wilson just spoke about.

In the case of brownfields, which are abandoned or under-utilized properties where redevelopment is complicated by known or suspected contamination, lenders, investors, and developers fear the high and uncertain costs of clean-up, so they avoid developing these contaminated sites. Blighted areas of brownfields hinder the redevelopment of effective communities, and create safety and health risks for residents.

The obstacles in cleaning these sites, such as regulatory barriers, lack of private investment, contamination and remediation issues, are being addressed through a wide range of Federal programs, including the tax incentive for brownfields.

The Administration proposed, and the Congress enacted, in the Taxpayer Relief Act of 1997 a Brownfields Tax Incentive that permits current deduction of certain remediation expenses. The qualified contaminated site must be located within a targeted area: high-poverty Census tracts, designated Empowerment Zones and

Enterprise Communities, or certain EPA brownfields pilot projects. State environmental agencies certify eligibility. That provision expires at the end of 2000.

The current law tax incentive was designed to be temporary, to encourage faster clean-up of brownfields in targeted areas. But many taxpayers were unable to take advantage of the incentive because environmental remediation often extends over a number of years. For that reason, the Administration's budget proposed a permanent extension of the Brownfields Tax Incentive, and that proposal was introduced by Mr. Coyne, for which we are grateful, in H.R. 1630.

Finally, a set of proposed incentives for energy efficiency and the environment, which Mr. Reicher mentioned briefly, is contained in H.R. 2380, introduced by Mr. Matsui and others.

The incentives are designed to reduce energy consumption and greenhouse gas emissions by encouraging the deployment of technologies that are highly energy efficient and that use renewable energy sources. The incentives cover buildings and homes, vehicles, renewable energy, and industrial equipment.

We had to consider a number of different proposals in putting together this package. And we applied certain criteria to guarantee that the incentives were as efficient as possible. First of all, the kinds of technologies qualifying for these tax incentives had to exhibit superior energy efficiency compared to conventional equipment. We wanted to avoid using tax dollars to pay for things that people would be buying in any event.

Second, there was a high threshold for eligibility. The energy efficiency standards had to be set sufficiently high that, although they were manageable, they were pushing the frontier of what was available, and trying to move the markets to develop more highly energy-efficient technologies.

Third, there are high up front costs, compared to conventional equipment. But we did not want to pay for small items that are widely used, in large part to control the revenue cost. We wanted to focus on technologies where the high up front costs were a barrier to acceptance, in the hope that as they were accepted more, the costs would come down.

These technologies had to be commercially available. And finally, there had to be a criterion available so that the IRS could administer the tax incentives. EPA or another agency had to be able to certify that specific technologies, or specific pieces of equipment, would qualify.

The proposed incentives for buildings and homes would encourage investment in highly energy-efficient building equipment in new homes and solar energy systems. The tax credit for energy-efficient building equipment would range from 10 to 20 percent depending on the efficiency of the items. The items covered include electric heat pumps, natural gas water heaters, electric and natural gas heat pumps, advanced central air conditioners, and fuel cells.

The higher credit is available for super energy-efficient models, and the lower credit for items that meet high energy efficiency standards but do not satisfy the 20-percent threshold. The tax credit for energy efficient new homes ranges from \$1,000 to \$2,000, depending on the home's energy efficiency. There is also a 15-percent

credit, up to \$2,000, for photovoltaic solar energy systems, and \$1,000 for solar water heating systems.

The proposed tax credits for electric and hybrid vehicles will encourage purchase of vehicles that incorporate advanced automotive technologies and help move advanced hybrid vehicles from the laboratory to the highway.

Chairman HOUGHTON. Can I ask you a question? How much longer are you going to go on? Because the red light is on. We have got other panels.

Mr. BURMAN. About a minute, sir.

Chairman HOUGHTON. OK. Fine. Thank you.

Mr. BURMAN. There is a 10-percent credit for the cost of electric vehicles and fuel cell vehicles, up to \$4,000. That is supposed to be phased down between 2002 and 2005 under current law. The proposal would extend the \$4,000 credit through 2006. The proposal would also provide credits up to \$3,000 for hybrid vehicles.

The proposal would extend the wind and biomass tax credit, and make it available to open loop biomass, and also to energy produced from cofiring biomass with coal. There is also an 8-percent tax credit for energy-efficient industrial equipment, such as combined heat and power systems. There is an 8-percent credit for that.

The proposed incentives have the potential to significantly improve energy efficiency and the environment. There are some examples in my testimony. I will just conclude by saying that the package of tax proposals put forward by the Administration would, if enacted, make American communities stronger, cleaner, and better places to live and work. I applaud the Chairman and the Ranking Member for holding this hearing on the proposals of the Members of the Ways and Means Committee to advance these important priorities. And we look forward to working with you toward that end.

[The prepared statement follows:]

**Statement of Leonard Burman, Deputy Assistant Secretary, Tax Analysis,
U.S. Department of the Treasury**

Mr. Chairman, Ranking Member Coyne, and distinguished Members of the Subcommittee:

I appreciate the opportunity to discuss with you today the Administration's proposed tax incentives for improving the environment.

Earlier this year, in the Administration's budget for FY 2000, the President proposed initiatives to help build livable communities for the 21st century. The Livable Communities initiative aims to provide communities with tools, information, and resources they can use to enhance the quality of life of their residents, enhance their economic competitiveness, and build a stronger sense of community. As part of that initiative, the Administration proposed a new financing tool—Better America Bonds—to help preserve green space and improve water quality for future generations. The proposed \$700 million in tax credits over 5 years would make available \$9.5 billion in bond authority over 5 years for investments by state, local, and tribal governments to preserve green space, create or restore urban parks, protect water quality, and clean up abandoned industrial sites. The Administration also proposed to make permanent the tax incentive to clean up brownfields in targeted areas, generally low-income communities, which is scheduled to expire on December 31, 2000. The revenue cost of that proposal is estimated to be \$0.6 billion over five years.

The Administration's budget also included a \$3.6 billion package of tax incentives over 5 years to encourage energy efficiency, reduce greenhouse gas emissions, and develop renewable energy sources. The tax incentives are part of a larger package of complementary initiatives. In addition to the \$3.6 billion of tax incentives, the Administration proposed to increase funding for R&D in energy efficient technology and renewable energy, a new Clean Air Partnership Fund to boost state and local

efforts to reduce air pollution and greenhouse gases, and \$1.8 billion for global climate change research.

My comments today will focus on an explanation of the Administration's tax initiatives for improving the environment.

BETTER AMERICA BONDS

Americans are concerned that the quality of the environment surrounding their communities is threatened by sprawl, that scenic vistas are being lost, that watersheds are eroding and contaminated, and that public access to outdoor recreation is diminishing.

To address these concerns, the Administration proposed the creation of a new financial tool—referred to as “Better America Bonds”—for use by state, local, and tribal governments, often in partnership with non-profit organizations, in securing more livable communities. Better America Bonds are modeled after the current-law provision for Qualified Zone Academy Bonds. The federal government would, in effect, pay all the interest on Better America Bonds for fifteen years, thereby significantly lowering the cost of financing below that attainable by state, local, and tribal governments issuing traditional tax-exempt bonds. Mr. Matsui and others have introduced a proposal for Better America Bonds in H.R. 2446.

Interest would effectively be paid to holders of Better America Bonds in the form of a credit that could be claimed by the bondholder against Federal income taxes otherwise due. The credit rate would be set by the Treasury Department on a daily basis based on aa corporate yields of comparable maturity. The credit rate set for the day on which the bonds were sold would apply for the life of the bonds. (This method of setting credit rates was established by Treasury regulations for Qualified Zone Academy Bonds sold on or after July 1, 1999.) Issuers of Better America Bonds would pay no interest for the 15-year term of the bonds; their only obligation would be for repayment of principal after 15 years.

H.R. 2446 is designed to enhance the marketability of Better America Bonds by allowing buyers of the bonds to strip the “coupons,” in the form of the tax credits, from the obligation to repay principal and sell the two pieces separately, much the same way that Treasury obligations are stripped. This would permit non-taxable entities, such as pension funds and endowments, to benefit from the gain between the current value of the stripped principal and the repayment of principal at par upon redemption, while another taxable investor claims the tax credit.

The proceeds of Better America Bonds could be used for the following purposes:

1. Acquisition of land for open space, wetlands, parks, or greenways. Acquired land would be owned by a government or a tax-exempt entity whose exempt purposes include environmental protection.
2. Construction of public access facilities such as campgrounds, hiking and biking trails on publicly-owned land or land owned by a tax-exempt entity whose exempt purposes include environmental protection.
3. Remediation of publicly-owned parks and open space to improve water quality by planting trees or other vegetation, creating settling ponds to control runoff, or remediating conditions caused by the prior disposal of toxic or other waste.
4. Acquisition of permanent easements on privately-owned open land that prevent commercial development and any substantial change in the character or use of the land. Such easements could be held by governments or tax-exempt entities.
5. Environmental assessment and remediation of brownfields owned by state or local governments under certain circumstances.

In general, property acquired with the proceeds of Better America Bonds would be available only for public use and use by tax-exempt entities, but not private use. The one exception is with respect to remediated brownfields, which could be sold to a private entity for private development, with the sale proceeds made available to repay principal.

After the expiration of the 15-year term of the bonds, tax-exempt entities whose purpose includes environmental protection would have first option to buy any land acquired with Better America Bond proceeds if the government decided to sell the land for development or otherwise convert it to a non-qualifying use. A tax-exempt entity's option to buy could be exercised at the original price of the land, rather than its current market price. The tax-exempt entity would be required to hold the property in its qualifying use in perpetuity.

The Administration proposes \$1.9 billion of authority to issue Better America Bonds each year for 5 years beginning in 2000 (i.e., a total of \$9.5 billion of bond authority). The Environmental Protection Agency (EPA) would administer an annual, open competition among state, local, and tribal governments for authority to issue these bonds, subject to published EPA guidelines. H.R. 2446 stipulates that,

as part of the competitive application process, the EPA should try to distribute the credits among the states in proportion to their populations.

Projects qualifying for Better America Bonds, with the exception of remediated brownfields converted to private use, could be financed by tax-exempt bonds under current law. Indeed, states and localities occasionally use tax-exempt bonds for these purposes. But more needs to be done. Benefits from environmental projects are often so diffused over time and distance that taxpayers within particular local jurisdictions are reluctant to finance such projects with conventional tax-exempt bonds.

Compared to traditional tax-exempt bonds, Better America Bonds would significantly reduce the financing costs to local taxpayers of environmental projects. For example, annual payments of principal and interest on a traditional 30-year, \$1 million tax-exempt bond issue would, at current interest rates, be about \$71,000. In comparison, the annual payments into a sinking fund that would repay after 15 years the \$1 million principal of an issue of Better America Bonds would be about \$42,000. A state or local government issuing the bonds would thus save about \$29,000 per year over the initial 15 years, and \$71,000 per year over the remaining 15 years of a 30-year bond's term. Better American Bonds would cost state and local governments only about half of what a tax-exempt bond would (in present value terms). This is a powerful tool for financing investments to make our communities better.

BROWNFIELDS REMEDIATION COSTS

Brownfields are abandoned or underutilized properties where redevelopment is complicated by known or suspected contamination. Because lenders, investors, and developers fear the high and uncertain costs of clean up, they avoid developing contaminated sites. Blighted areas of brownfields hinder the redevelopment of affected communities and create safety and health risks for residents. The obstacles in cleaning these sites, such as regulatory barriers, lack of private investment, contamination and remediation issues, are being addressed through a wide range of Federal programs that includes the tax incentive for brownfields remediation.

To encourage the clean up of contaminated sites, the Administration proposed, and the Congress enacted in the Taxpayer Relief Act of 1997, a brownfield tax incentive that permits the current deduction of certain environmental remediation costs. Environmental remediation expenditures qualify for current deduction if the expenditures would otherwise be capitalized (generally costs incurred to clean up land and groundwater that increase the value of the property) and are paid or incurred in connection with the abatement or control of hazardous substances at a qualified contaminated site. A qualified contaminated site must be located within a targeted area, i.e., census tracts with at least 20 percent poverty rates (and certain contiguous industrial or commercial tracts), designated Empowerment Zones and Enterprise Communities, and the 76 EPA brownfields pilot projects designated before February 1997. In order to claim a current deduction, the taxpayer must obtain a statement from a designated state environmental agency that the qualified contaminated site satisfies the statutory geographic and contamination criteria of a brownfield. The provision applies to qualified environmental remediation expenditures paid or incurred in taxable years ending after August 5, 1997, and before January 1, 2001.

The current-law tax incentive is designed to be temporary to encourage faster clean up of brownfields in targeted areas. However, many taxpayers are unable to take advantage of the incentive because environmental remediation often extends over a number of years. For that reason, the Administration's budget proposed a permanent extension of the brownfields tax incentive. That proposal was introduced by Mr. Coyne and several cosponsors as H.R. 1630.

Reclaiming brownfields would encourage the redevelopment of targeted communities by making unused or underutilized land productive again. Extending the special current-law rule on a permanent basis would eliminate uncertainty regarding the future availability of the incentive and encourage long range investment in the targeted areas. The revenue cost of the proposal is estimated to be approximately \$0.6 billion for FY 2000–2004. Treasury estimates that the tax incentive would induce an additional \$7 billion in private investment to return 18,000 brownfields to productive use over the next ten years.

ENERGY EFFICIENCY AND THE ENVIRONMENT

Individuals and businesses do not invest enough in energy-saving technologies that produce benefits to society in excess of their private returns. If a new technology reduces pollution or emissions of greenhouse gases, those “external benefits”

should be included in the decision about whether to undertake the investment. But potential investors have an incentive to consider only the private benefits in making decisions. Thus, they avoid technologies that are not profitable even though their benefits to society exceed their costs. Tax incentives can offset the failure of market prices to signal the desirable level of investment in energy-saving technologies because they increase the private return from the investment by reducing its after-tax cost. The increase in private return encourages additional investment in energy-saving technologies.

The proposed tax incentives for energy efficiency and the environment are designed to reduce energy consumption and greenhouse gas emissions by encouraging the deployment of technologies that are highly energy efficient and that use renewable energy sources. The proposed incentives are also designed to minimize windfalls for investments that would have been made even absent the incentives and to facilitate tax administration.

The design of the tax incentives incorporates the following considerations:

1. *Superior energy efficiency compared to conventional equipment.* The eligible items should meet higher standards for energy efficiency than conventional equipment or use renewable energy sources. This ensures that tax benefits promote energy efficiency and reduce greenhouse gas emissions.

2. *High threshold for eligibility.* The energy efficiency standards should be set sufficiently high so that eligible items presently account for a small share of the market. This minimizes windfalls for purchases that would have been made absent the credit.

3. *High up-front costs compared to conventional equipment.* The targeted technologies have significantly higher purchase prices than conventional equipment and, at current market prices, have limited cost effectiveness. These high up-front costs are another reason relatively few items incorporating the targeted technologies would be purchased without the credit.

4. *Commercially available.* The items should be commercially available or near commercialization. This ensures that the incentives encourage the deployment of new technologies that private markets have already developed.

5. *Ease of administration.* The items must be able to be defined precisely enough so that the IRS can administer the incentives. This helps to ensure that tax benefits are claimed only for items for which they are intended.

The tax incentives the Administration has proposed cover buildings and homes, vehicles, renewable energy, and industrial equipment. Mr. Matsui and others introduced these proposals in H.R. 2380.

Buildings and Homes

This sector currently accounts for about one-third of energy consumption and the related greenhouse gases. The proposed tax incentives would encourage investment in highly energy efficient building equipment and new homes, and solar energy systems.

Tax credit for energy efficient building equipment. A tax credit of 10 percent or 20 percent would be provided for energy efficient equipment, depending upon the efficiency of the equipment. This credit encourages the purchase of equipment that will improve the energy efficiency of both residential and commercial buildings. The items covered are electric heat pump and natural gas water heaters, electric and natural gas heat pumps, advanced central air conditioners, and fuel cells.

The credit would be 20 percent of the cost of super energy efficient models, subject to a cap. It would be available for the period 2000 through 2003. A 10 percent credit would be available for electric heat pumps, central air conditioners and natural gas water heaters that meet high efficiency standards, but do not satisfy the standards for the 20 percent credit. The smaller credit would be available for the period 2000 through 2001.

Items eligible for the 20 percent credit are top-tier technologies that are much more energy efficient than conventional equipment. For example, compared to typical units on the market, the eligible advanced air conditioning systems and electric heat pumps are 40 percent more efficient, and eligible electric heat pump water heaters and natural gas heat pumps are about twice as efficient. Items eligible for this credit embody new, cutting-edge technologies that have substantial purchase prices and limited in their cost effectiveness. They generally account for less than one percent of market sales. Therefore, the credits would benefit very few purchases that would have been made absent the credit. The 10 percent credit provides a more widely available incentive for purchases of highly energy efficient items, as well as state of the art technology, during the period 2000 through 2001. Some makes and models of qualifying items are currently available. Existing energy efficiency stand-

ards for the designated classes of equipment have been used to define eligible items precisely enough for IRS to administer the credit.

The revenue cost of this incentive is estimated to be \$1.5 billion for FY 2000–2004. The credit is estimated to increase purchases by nearly 10 million items of highly energy efficient building equipment through 2009.

Tax credit for energy efficient new homes. Residences account for about one-sixth of U.S. greenhouse gases and offer one of the largest sources of energy saving potential. Over one million new homes and manufactured homes are built and sold each year. Some states and certain Federal programs require new houses to meet certain energy code standards for insulation and related construction standards, and for heating, cooling and hot water equipment. However, the energy efficiency of new homes could be improved significantly through the use of more energy efficient building practices and more efficient heating and cooling equipment that exceed current efficiency standards.

A tax credit equal to \$1,000 to \$2,000 (depending upon the home's energy efficiency) would be provided to encourage consumers to purchase energy efficient new homes. The tax credits would be: (1) \$1,000 for homes that use at least 30 percent less energy than the standard under the 1998 International Energy Conservation Code (IECC); this credit would be available for homes purchased during the period 2000 through 2001; (2) \$1,500 for homes that use at least 40 percent less energy than the IECC standard; this credit would be available for homes purchased during the period 2000 through 2002; and (3) \$2,000 for homes that use 50 percent less energy than the IECC standard; this credit would be available for homes purchased during the period 2000 through 2004.

Homes qualifying for the credit would use 75 percent to 85 percent less energy than existing housing and as much as 50 percent less energy than typical new housing. The revenue cost is estimated to be \$0.4 billion for FY 2000–2004. The credit is estimated to result in purchases of over 250 thousand new energy efficient homes through 2009.

Tax credit for solar energy systems. Solar energy systems accounted for 0.02 percent of electricity generation in 1996. These systems produce no greenhouse gas emissions. The tax credit for the purchase of rooftop photovoltaic (PV) systems and solar water heating systems would be 15 percent of the cost up to a maximum credit of \$2,000 for PV systems and \$1,000 for solar water heating systems. The tax credit for PV systems would be available for the period 2000 through 2006, and the tax credit for solar water heating systems would be available for the period 2000 through 2004.

The revenue cost of this incentive is estimated to be \$0.1 billion for FY 2000–2004. This incentive will help to achieve the President's goal of one million solar energy roofs by 2010. The credit is estimated to reduce electricity production from non-solar sources by 3 billion kilowatt hours through 2009.

Vehicles

Cars and light trucks (including minivans, sport utilities, and pickups) currently account for 20 percent of greenhouse gas emissions. Those vehicles also account for about 20 to 40 percent of urban smog-forming emissions and 40 percent of total U.S. petroleum consumption. Almost all cars and trucks use a single gasoline-fueled engine.

Hybrid vehicles, which have more than one source of power on board, and electric vehicles have the potential to reduce greenhouse gas emissions, air pollution, and petroleum consumption. The proposed credits will encourage the purchase of vehicles that incorporate advanced automotive technologies and will help to move advanced hybrid vehicles currently under development from the laboratory to the highway. These vehicles can significantly reduce emissions of carbon dioxide, the most prevalent greenhouse gas.

The proposal would extend the present tax credit for electric vehicles and fuel cell vehicles. Under current law, a 10 percent credit is provided for the cost of qualified electric vehicles and fuel cell vehicles up to a maximum credit of \$4,000. The maximum amount of the credit is scheduled to phase down in 2002 and be phased out in 2005. The President's proposal would extend the tax credit at its \$4,000 maximum level through 2006.

The proposal also would provide tax credits of \$500 to \$3,000 for certain hybrid vehicles, depending upon requirements for the vehicle's design and performance. A qualifying hybrid vehicle is a road vehicle that can draw propulsion energy from both of the following on-board sources of stored energy: (1) a consumable fuel, and (2) a rechargeable energy storage system. The tax credits would be available for vehicles purchased during the period 2003 through 2006. The credit amounts—avail-

able for all qualifying vehicles, including cars, minivans, sport utility vehicles, and pickup trucks—would be:

- \$500 if the rechargeable energy storage system provides at least 5 percent but less than 10 percent of the maximum available power;
- \$1,000 if the rechargeable energy storage system provides at least 10 percent but less than 20 percent of the maximum available power;
- \$1,500 if the rechargeable energy storage system provides at least 20 percent but less than 30 percent of the maximum available power, and
- \$2,000 if the rechargeable energy storage system provides 30 percent or more of the maximum available power.

If the vehicle actively employs a regenerative braking system, the amount of the credit shown above would be increased by:

- \$250 if the regenerative braking system supplies to the rechargeable energy storage system at least 20 percent but less than 40 percent of the energy available from braking in a typical 60 miles per hour (mph) to 0 mph braking event;
- \$500 if the regenerative braking system supplies at least 40 percent but less than 60 percent of such energy to the storage system; and
- \$1,000 if the regenerative braking system supplies 60 percent or more of such energy to the storage system.

Hybrid vehicles eligible for the largest credit would be 50 percent to 100 percent more fuel efficient than a conventional vehicle of the same size and power. Doubling a car's fuel economy reduces its emissions of carbon dioxide by about 50 percent. The revenue cost of this initiative is estimated to be \$0.9 billion for FY 2000–2004. These credits are estimated to result in purchases of 13 million electric and hybrid vehicles through 2009.

Renewable energy

Wind and biomass currently account for about 2 percent of electricity generation from renewable sources. These renewable energy sources produce virtually no greenhouse gas emissions. To make electricity produced from wind and biomass price competitive with other forms of electricity generation, the proposal would extend the current-law tax credit for wind and biomass for five years, expand eligible biomass sources, and allow a credit for electricity produced from cofiring biomass with coal.

Current law provides a tax credit of 1.5 cents per kilowatt hour (adjusted for inflation after 1992) for electricity produced from wind and closed-loop biomass (organic material from a plant that is grown exclusively to fuel a qualified electricity generation facility). The current tax credit covers the first ten years of production from facilities placed in service before July 1, 1999.

The proposal would extend and expand the tax credit for electricity produced from wind and biomass. It would:

- Extend the current wind and biomass credit for 5 years to cover facilities placed in service before July 1, 2004.
- Expand the definition of eligible biomass for the 1.5 cent credit beyond closed-loop biomass to include certain forest-related resources and agricultural and certain other sources. This change would apply to facilities placed in service after June 30, 1999 and before July 1, 2004.
- Allow cofiring biomass with coal. This proposal adds a 1.0 cent per kilowatt hour tax credit for electricity produced by cofiring biomass in coal plants after the date of enactment and before July 1, 2004. Only the portion of electricity associated with biomass would be eligible for the credit.

The revenue cost of this incentive is estimated to be \$0.3 billion over FY 2000–2004. This incentive is estimated to increase electricity production from renewable energy sources by 32 billion kilowatt hours through 2009.

Industry

The proposal would promote energy efficiency in industry by encouraging investments in combined heat and power (CHP) systems. These systems use the thermal energy that is otherwise wasted in producing electricity by more conventional methods. These systems increase energy efficiency, lower the consumption of primary fossil fuels, and reduce greenhouse gas emissions compared with conventional methods.

To encourage and accelerate investment in CHP equipment, an 8 percent tax credit would be provided for eligible CHP investment. A qualified CHP system would be required to produce at least 20 percent of its total useful energy in the form of thermal energy and at least 20 percent in the form of electric or mechanical power, and would have to meet certain efficiency standards. The credit would apply to property placed in service between 2000 and 2002. Eligible CHP systems should reduce input energy requirements by about one-third compared to conventional systems. The revenue cost of this incentive is estimated to be \$0.3 billion for FY 2000–

2004. The credit is estimated to increase cogeneration electrical capacity by more than 1.2 gigawatts through 2009.

Environmental benefits of the proposal

The proposed incentives described above encourage businesses and consumers to increase their investment in energy-efficient items, new technologies, and renewable energy sources. The investments induced by the credits would be long-lived and, therefore, would produce energy savings and greenhouse gas reductions for many years after the investment is undertaken. The induced increase in the market penetration of energy-efficient technologies, new technologies, and renewable energy sources may lead to lower cost production and increased awareness of the benefits of such technologies that could have lasting effects.

The cumulative reduction in greenhouse gas emissions attributable to the tax incentives is estimated to be between 100 and 150 million metric tons of carbon equivalent (MMTCE) over the lifetime of the investments undertaken from 2000 through 2009.¹ Over one-third of the emissions reduction is attributable to the tax credits for electric and hybrid vehicles and over one-fourth to the tax credits for building equipment.

Reductions in greenhouse gas emissions, however, are not the only benefits that will be realized from these incentives. The incentives will also reduce local air pollution. In addition, the proposals will produce private benefits, such as energy savings for consumers and businesses. The present value of energy savings for consumers and business over the lifetime of items purchased through 2009 is estimated to be between \$22 billion and \$33 billion.

CONCLUSION

The Administration strongly supports the proposed tax credits for holders of Better America Bonds, a permanent extension of the current deduction of brownfields remediation expenses, and tax credits for energy efficiency and the environment.

The proposed Better America Bonds provide a new financing tool that will enable state, local, and tribal governments to preserve green spaces, create and restore urban parks, protect water quality and clean up brownfields. Those governments would be authorized to issue a total of \$9.5 billion of Better America Bonds to finance environmental and conservation projects. The proposed permanent extension of the current deduction of brownfields remediation costs will help return industrial and commercial sites in targeted areas to productive use. The proposal is estimated to induce an additional \$7 billion in private investment and return an additional 18,000 brownfields to productive use over the next ten years. Together, these initiatives will help to preserve our environmental heritage and make our communities more livable in the 21st century.

The Administration's proposed package of tax incentives for energy efficiency and the environment is designed to achieve reductions in greenhouse gas emissions and improvements in energy efficiency. Purchases of items that offer superior energy efficiency or that use renewable energy sources would be eligible for a temporary tax credit. The proposed incentives are estimated to reduce greenhouse gas emissions by 100 to 150 MMTCE over the lifetime of purchases made through 2009 that were induced by the credits. The benefits of the proposal should increase significantly in the years beyond the ten-year budget window, through the transformation of markets after the credits are no longer in effect. Moreover, the proposed incentives also may generate other benefits to society, such as cleaner air.

In conclusion, Mr. Chairman, we believe that the Administration's proposed tax initiatives represent sound policy that can produce significant environmental benefits over the next ten years and for decades to come. The proposals represent investments that will generate long-term benefits for the Nation. We look forward to working with the Congress on these initiatives.

This concludes my prepared remarks. I would be pleased to respond to your questions.

Chairman HOUGHTON. Likewise. Thanks very much. I am sorry to push you along here.

¹ According to the Department of State, *Climate Action Report*, July 1997, US greenhouse gas emissions are estimated to be 1,646 MMTCE in 2000, 1,742 MMTCE in 2005, 1,837 MMTCE in 2010, 1,998 MMTCE in 2020.

Mr. BURMAN. That is fine.

Chairman HOUGHTON. We just have a few other people.

So I am going to ask Mr. Coyne if you would like to start the questioning.

Mr. COYNE. Thank you, Mr. Chairman. I wanted to ask Mr. Burman whether, in your assessment, the Better America Bonds will be a good financial product and will have the ability to attract investors?

Mr. BURMAN. I believe they will. As was mentioned, I think by Mr. Wilson, these bonds provide tax credits in lieu of interest for 15 years, a 15-year duration of the bond issue. By comparison, tax-exempt bonds reduce the cost of borrowing, but communities still have to pay the interest on those loans. We did some calculations that suggested that a locality would pay off the bond issue over the first 15 years with lower payments than they would make on a 30-year bond, substantially lower.

In the case of the Qualified Zone Academy Bond program, there has been an increasing public acceptance of that program. I think it was stimulated by the fact that Treasury recently issued regulations that set the interest rate at a more reasonable level, at the rate for corporate AA bonds. And recent bond issues have been trading at or near par. Several States have actually exhausted their bond authority. I think California is one.

Mr. COYNE. Thank you.

Mr. BURMAN. Thank you.

Mr. COYNE. Thank you, Mr. Chairman.

Chairman HOUGHTON. Thank you, Mr. Coyne.

Mr. Portman.

Mr. PORTMAN. Thank you, Mr. Chairman. I would like to start by asking Secretary Reicher, if I could, a couple of questions about his testimony, in particular, wind power.

I understand from your testimony that you believe wind power is close to being competitive in the United States, but that we still have some distance to go, because of the cost. And I guess what I would like to know is, given your experience, how are we doing in wind power development, particularly in farm country? And how would the extension of the production tax credit which is, as you know, one of the things we are talking about in the extender package to do yet this year—how would that assist with regard to wind power development?

Mr. REICHER. Mr. Portman, we are doing well in the development of wind power. First of all, it is a huge resource in this country. Two States alone, Texas and North Dakota, could easily supply the entire electricity needs of the country. Costs have come down. As I said, they are a tenth of what they were in 1980. The production tax credit has helped.

We are seeing real growth: States like Iowa, Minnesota, Wisconsin, the Dakotas, Texas, Colorado, Wyoming, Vermont. And in fact, Mr. Coyne and Mr. Houghton, there will be new wind facilities, major ones, built both in New York and Pennsylvania over the next year.

California is not even on the list of the top 15 wind States in the United States in terms of the resource potential. States that I have

mentioned, even New York State for example, has a greater developable resource than California in terms of wind.

The important point, referring to Mr. Portman's question about wind power, is that it is a wonderful addition to farm country. I visited Iowa recently and Minnesota recently. And there, the wind developers are paying \$2,000 to \$3,000 per turbine per year to farmers for the use of their land. They plant crops right up to the base of the turbine. They graze their cows right up to the base. And as one of the farmers said to me, "This is a real cash crop." And it is an important cash crop when farm country is in such crisis.

So it is a wonderful, wonderful addition. And the key is that we are not quite there, in terms of the cost of this technology. Combined cycle natural gas produces electricity at about 2 to 3 cents a kilowatt-hour; wind is about 4 to 5 cents. Production tax credit is critical to make up that gap, as we continue through R&D to bring the cost down.

It is a multi-billion-dollar-a-year industry worldwide. We do not lead it; the Danes and the Germans do. We would like to recapture our place in that industry. We have new factories being built in North Dakota, in Illinois. In Mr. Portman's district there is a gear box manufacturer.

And we just think the tax credit is absolutely essential to moving this technology—the cheapest of the renewables—forward, and gaining the benefits, both economic and environmental, that we see from it.

Mr. PORTMAN. Just a quick follow-up. The production credit is what? One-and-a-half cents?

Mr. REICHER. Yes.

Mr. PORTMAN. And you are saying it is 4 to 5 cents per kilowatt-hour now, which does not allow it to be competitive with the most efficient uses of other sources of energy, but it is now within striking distance. How much longer do you think the tax credit would be needed, if we were to reinstate it?

Mr. REICHER. I think that the 5-year extension, we would be there with that 5-year extension. As I said, the natural gas plants are 2 to 3 cents. We are at 4 to 5 cents. Our R&D trajectory has us getting down to 2 to 2½ cents for wind in the next few years. So a 5-year extension would comfortably get us there.

And I tell you, this is a terrific technology, and brings real economic benefits to so many areas of the country. I spoke to Congressman Boehlert recently. There will be a major installation in his district. And the farmers there are very much looking forward to the sort of payments they get as they struggle, for example, with the loss of the dairy industry.

Mr. PORTMAN. When you look at it from a big-picture perspective, comparing it to other sources of alternative energy, including solar and biomass and other areas within your jurisdiction at the Department of Energy, would you say that wind has the most potential?

Mr. REICHER. Wind is today the cheapest of the renewable energy sources. So in the near term, it has the greatest potential in adding large-scale megawatts of clean energy to the U.S. base. We are making great progress in solar, in biomass, in geothermal, but wind is the cheapest of those, and the production tax credit there.

And I would also encourage you as well in biomass and solar. That will move those down those cost curves and make those important parts of our energy mix, as well.

Mr. PORTMAN. Thank you, Mr. Secretary. Thank you, Mr. Chairman.

Mr. REICHER. Thank you, Mr. Portman.

Chairman HOUGHTON. Thank you very much.

Ms. DUNN.

Ms. DUNN. Thank you very much, Mr. Chairman.

Mr. Wilson, I wanted to ask you, with the brownfields initiative and the tax incentives that you have been using, is this bringing people together in communities, like the one that I represent, the Seattle area? Are you finding success there as local governments work with the Federal Government and conservancy constituencies get involved, too?

Mr. WILSON. Are you speaking just of the tax incentive, or sort of the overall brownfields?

Ms. DUNN. The program.

Mr. WILSON. In terms of the brownfields program, we are seeing in cities around the country really great emerging partnerships between developers and community groups and local governments to figure out ways to identify the areas they need to clean up to be able to bring in redevelopment, whether it is housing or businesses or a park for the neighborhood. We have seen that all over the country.

And in terms of the Brownfields Tax Incentive in particular, because it is newer, because there is some uncertainty with it, because it is going to sunset under current law, we have not seen it used as much as the other brownfields programs.

But for instance, in Westchester, Pennsylvania, there is a great example where the local developers and community people have said to us over and over again that the tax incentive has been a real boon to them putting together the deal to redevelop a neighborhood that is in a very poverty-stricken part of Pennsylvania. If the plans go forward as they think they will, they might be able to hire as many as 200 people. And because of the tax incentive, they believe they will save over \$40,000 in clean-up costs.

And I think if we can make this tax incentive permanent, you are going to see more and more examples of that around the country, because people will be more willing to get into it because they know it is going to be there reliably in the future.

Ms. DUNN. How much time do you expect it would take to evaluate whether people will take advantage of the incentive?

Mr. WILSON. Well, in the law as it is currently written, there is no provision to sort of go out and collect information about how well it is being used. The States have surveyed their localities. And we have found 30 or 40 of these sites, brownfield areas, have really been worked well and are using the tax incentive.

In the future, I think we would want to look at ways that we can get a better sense of exactly where this is being used, because in current law we do not have a mechanism to go out and find exactly how extensively it is being used.

Ms. DUNN. All right. Thank you.

Mr. WILSON. We have imperfect information right now.

Ms. DUNN. You have what?

Mr. WILSON. Imperfect information, because we just have not been able to get information back from everyone who is using it.

Ms. DUNN. Thank you very much. Thank you, Mr. Chairman.

Chairman HOUGHTON. Fine.

Mr. Weller.

Mr. WELLER. Thank you, Mr. Chairman. I want to commend you for the subject matter of this hearing. This is a very, very worthwhile hearing, discussing something that I think we all care about in a bipartisan way.

On the issue of brownfields, I represent a pretty diverse district, representing the South Side of Chicago and the south suburbs and Will and Cook Counties and a lot of farm communities and bedroom communities. And brownfields are an issue that affects every one of those types of communities, whether you are in a rural area or a suburban or a city-type community.

And, you know, it can be anything from an abandoned gas station to hundreds of acres of abandoned industrial parks. In the tenth ward of Chicago, I have the largest brownfield in Illinois, the former Republic Steelworks. And then, of course, neighboring to that is the former Wisconsin Steelworks; and then the Joliet Arsenal, a larger former military facility, which is a brownfield; and a lot of smaller ones. It is estimated, I think, there are over 2,000 brownfields in the Chicago region, alone.

Mr. Wilson, you had indicated in your testimony, you were discussing the current tax provision, and I was one of those who worked to get that in the 1997 Balanced Budget Act, working with mayor Daley and others to have that included. You had indicated that the current provision would essentially benefit about 8,000 brownfields across this country.

Now, I have seen statistics that there is almost an estimate one-half a million—an estimated 500,000—brownfields across the country. What is necessary, do you believe, to be able to achieve the goal of eliminating, cleaning, up and revitalizing all brownfields; not just the 8,000 that would be targeted by the existing provision, but to eventually clean them all up?

Mr. WILSON. Well, it is clearly a huge task. I mean, just in the Chicago area alone, you have pointed out, there are 2,000 of these sites. For one, I do believe that if Congress was to make permanent the Brownfields Tax Incentive, you would get more of these brownfields cleaned up, because developers would be able to save money on their clean-up costs. That 8,000 figure is over a 5-year period. So if it is used and used and used into the future, you are going to keep being able to clean up more of these brownfields.

In addition, the Better America Bonds program, I think, complements this very well. One of the three general uses for the bonding authority is to clean up brownfield sites.

Mr. WELLER. Mr. Wilson, the Better America Bonds, is that targeted in the same way, a community's ability to use those, to the restrictions that were in the 1997 Act? Because when it comes to the Brownfields Tax Incentive, being able to expense those clean-up costs, you know, those were targeted, that benefit, solely to essentially low-income Census tracts, neighboring Census tracts, and Empowerment Zones.

Now, the Better America Bonds, are they restricted and targeted in the same way? Or can any community, whether it is New Lenox, Illinois, or Ottawa, or the tenth ward of Chicago, be able to use them?

Mr. WILSON. They are not limited in the same way at all. Any community that had a brownfield site that wanted to either assess the contamination or clean it up, or both, could apply for bonding authority under Better America Bonds. So there is no restriction in that way.

And getting back to your other comment, I think there is a perception out there that the current restrictions on the Brownfields Tax Incentive, whether it be the poverty restriction or the geographic, are really restrictive. And we have looked at that. And I think it is largely a perception at this point.

We have done a mapping program that is available to communities, for them to be able to identify, "Here is where I live. Here is where this brownfield site is. Can it use the tax incentive?" And indeed, it is much more widely available than I think people think. And we should probably do a better job of letting people know exactly how they can figure out if they are eligible.

Mr. WELLER. Well, my understanding is the redevelopment of the Joliet Arsenal, which is a 24,000-acre former military facility—there is a tall grass prairie there, the Abraham Lincoln National Cemetery—about 3,000 acres were set aside for industrial use. One of our later witnesses, of Center Point Properties, has taken on one of those industrial parks for redevelopment on the Joliet Arsenal.

And my understanding is that the Joliet Arsenal redevelopment, which has always received bipartisan support, is not eligible for this Brownfields Tax Incentive. So I would be interested in seeing those maps.

But the question I have for you—and perhaps I should direct it to Mr. Burman—is, would the Administration support changing this tax incentive so that any community, whether it is rural, city, suburb, or a middle-class community, regardless of the economic nature or whether or not it is in an Enterprise Zone, can be eligible for this Brownfields Tax Incentive?

Mr. BURMAN. Obviously, we would like to work with you on the targeting of the tax incentive, to make sure it is reaching its intended use. The Brownfields Tax Incentive was limited to the targeted areas, because in higher-income areas market incentives should result in properties being redeveloped. The land is worth more than the cost of remediation.

The real concern is that in high-poverty areas the land, after being remediated, might not be worth as much as it cost to do the remediation.

Mr. WELLER. You know, Mr. Burman, one thing I have always found is that all of us, I think, as we drive through communities, regardless of how prosperous they are, we all have noticed that gas station that used to sit there that closed a few years ago and that has never been redeveloped. And of course, that is a brownfield. And that is the cost of the financial liability of that clean-up.

And I just do not understand why we have a bias against a middle-class community, or a community of any other economic standard, on whether or not they could take advantage of this tax

incentive. The question I have is, why not allow any community anywhere the opportunity to use this tax incentive to revitalize and clean up abandoned brownfields?

Mr. BURMAN. As you pointed out, the Better America Bonds program does have a special provision in the case where property is not worth the clean-up cost and it is taken over by State or local government. Because it is abandoned, that government can use Better America Bonds to redevelop the property, and then move it back into commercial use.

Mr. WELLER. Of course, tax incentive is an incentive for a private developer, not the local government. But a private developer will take it on and recover their expenses and put it back to productive use.

Mr. Chairman, thank you for the little bit of few extra seconds there. And I look forward to working with you and the administration to solve this challenge.

Chairman HOUGHTON. Thank you, Mr. Weller. Thank you very much, Mr. Burman.

Mr. Neal.

Mr. NEAL. Thank you very much, Mr. Chairman. And again, thanks for holding this hearing in a bipartisan spirit.

Mr. Reicher, Mr. Wilson, or Mr. Burman, if you would like to take a stab at this question, do you get concerned at all that some of the zeal for open space preservation is also intended to say "No more growth; no more housing"? I mean, some people would argue that the best use of a piece of land is to put a house on it.

Mr. WILSON. There may be some who think that way. We do not count ourselves among them.

Mr. NEAL. Do you prefer "snob zoning" that would keep some housing out?

Mr. WILSON. Pardon me? I did not hear your question. Sorry.

Mr. NEAL. Do you prefer the application of some "snob zoning" that would prevent people from building homes?

Mr. WILSON. No. In fact, we want to stay as far away from local zoning decisions as possible. That is the job of local governments, not the Federal Government. But in terms of open space, we think there is value in open space, whether it is in urban area, a rural area, a suburban area. And one of the things we are going to try and do, assuming this Better America Bonds becomes law, is to make sure that all types of communities have access to this bonding authority, so that if they want to protect open space or create a park inside of a city, they are able to do that.

But it is up to them to decide which open space they would want to preserve. And so if a community cannot really demonstrate that it has broad community support for that idea, we would have to look at that closely.

Mr. NEAL. Well, "broad community support" could be interpreted as "No more growth," could it not?

Mr. BURMAN. One point that is important is that this is just one of many tools that we are proposing to provide to State and local governments to help them decide what is best for their communities. Also in the budget is a proposal to increase the low-income housing tax credit, which is important for providing housing in

lower income areas. There is also a proposal for the new markets tax credit.

Mr. NEAL. So you are arguing for more low-income housing in more low-income areas?

Mr. BURMAN. I am sorry, low-income housing wherever it is built. The point is, I think we are trying to provide tools to help local governments to deal with the challenges that they are facing. Among them, and certainly in some places, is the issue of sprawl and congestion and pollution.

Mr. NEAL. Look, I am sympathetic to what you want to do. But I think it is also important to take a look at how some of these patterns are developing. And some of these patterns are developing with the support of people who do not have a lot of interest in open space or environmental needs; they are interested in shutting the door on any more growth in those communities. And I think that that ought to be part of any discussion that takes place here. And I think you should be mindful of that as these deliberations ensue. In addition to that, you can make the argument that some low-income neighborhoods are saturated with low-income housing.

Mr. WILSON. I think that is a valid point. And I think that one of the reasons why we want to encourage regional partnerships to come forward to us with applications is so we are not pitting one jurisdiction versus another, or one neighborhood against another; but that there is a sort of a comprehensive look at a city and its surrounding areas, or a rural area or a small town and its surrounding rural counties.

Mr. NEAL. Yes, I think that that is the tack to adopt, primarily because I have witnessed that a lot of people who show up—and I do not have these responsibilities any more—but I have witnessed that a lot of people who show up have no environmental interests or leanings, but all of a sudden develop a fascination with open space.

Mr. WILSON. Right.

Mr. NEAL. So the point that I try to raise is that growth is important. And I still think that in a lot of vacant areas, putting a house on a piece of land helps an awful lot of people, and not just real estate people. It helps people who are desirous of finding that first-time home purchase.

Mr. WILSON. Right. Yes, this program is not about no-growth. It is about providing tools to communities to grow in the ways that they think are best for them.

Mr. NEAL. Enlightened growth.

Mr. WILSON. Yes.

Mr. NEAL. Thank you.

Chairman HOUGHTON. All right, thanks, Mr. Neal.

Mr. Hulshof.

Mr. HULSHOF. Thank you, Mr. Chairman. Thank you, gentlemen, for being here.

You know, one of the challenges of being a Member of Congress is that often we will start with a good idea or a laudable goal of something that we would like to see happen, and then in our zeal and clamor to get there, we sort of forget the steps that have to go into place to get to that goal. And specifically, maybe we do not examine whether or not the path to that goal is the best one.

And where I want to specifically focus—And Mr. Burman, I have got Treasury's description of the FY 2000 Budget that talks about tax credits for holders of Better America Bonds. And at page 30 it talks about the structure of Better America Bonds is identical to those proposed for the Qualified Zone Academy Bonds. And I think you have made reference in your testimony to the QZABs.

Now, for those folks who are not familiar with QZABs, this was bonding authority in the amount of \$400 million in 1997, and an additional \$400 million in bonding authority for 1998, for a total of \$800 million in bonding authority available. And yet, you would agree with me, I think, because you made reference to it at the tail end of your remarks, that the markets have been less than receptive. And I think that may be kind, but I do not want to characterize it. Would you agree with me that the markets have been less than receptive in using QZABs?

And I see some people behind you shaking their heads "No," but I will take your answer as a "Yes" or a "No."

Mr. BURMAN. Well, let me see if I can remember their talking points. [Laughter.]

Mr. BURMAN. There was slow take-up for Qualified Zone Academy Bonds in the first place. It was a brandnew program. It was just enacted in 1997. State and local governments had to figure out how to deal with these bonds, how to issue them; as did bond markets. And the credit rate, which was supposed to be the market interest rate, was set too low.

Once we adjusted the credit rate so that it was equal to the corporate AA bond rate, similar to the pre-tax rate that would apply to tax-exempt bonds, there has been, I think, fairly wide acceptance for Qualified Zone Academy Bonds. There have been several bond issues in California, I think Indiana—and I am just going to make up a list here, but I will be wrong—Illinois, Oklahoma, Texas, and Virginia. And there are numerous other States that are planning to issue bonds.

So I think for a new program, the experience has not been disappointing.

Mr. HULSHOF. I appreciate your having done your homework on this issue, anticipating these questions. The most recent letter that I have gotten, that I requested and received a response to from your former boss, Mr. Rubin, indicated, at least as of April 29 of this year, some months ago, I think about a total of about \$30 million issued. You are telling me that there are some additional states that you mentioned, Illinois, for instance, and some others. Do you have the most recent amount of QZABs that have actually been issued—generally, a ballpark number?

Mr. BURMAN. So far, it is about \$50 million.

Mr. HULSHOF. Fifty million, out of an \$800 million authority?

Mr. BURMAN. Right. But there are a number of other bond issues that are in the pipeline.

Mr. HULSHOF. The other thing, and you mentioned this at the tail end of your remarks, Mr. Burman, and I take it in the spirit that it is given. And you probably anticipated this question as well, regarding par value. And at least early on, for instance, there was an issue sold for a school in Chicago that was 97 percent of par. There was a second issue, a project in the Fresno and Clovis school

districts in California, at 91 percent of par. How do we get beyond those discounted measure?

Mr. BURMAN. The Treasury Department issued regulations in July that reset the credit rate exactly in response to those concerns. Since July that there has been a groundswell of interest in the program. So we think we have solved that problem.

Mr. HULSHOF. Let me, in the remaining time—Mr. Wilson, not to let you get off the hot seat, with one question. Again, and I mean this with much respect, but it is my understanding the proposal calls for the U.S. Environmental Protection Agency to review and approve each application. And I have got to tell you, I do not know anything about your background; maybe you are a finance major. But can you tell me what special expertise the EPA has regarding the issuance of financial instruments?

Mr. WILSON. Sure. Let me do it a little more broadly. The Administration believes it makes sense for EPA to be sort of the lead agency on reviewing applications, for several reasons. No. 1, the stated purposes of the Better America Bonds are brownfields clean-up, water quality enhancement, and open space protection.

Clearly, we already do a lot in the realm of brownfields assessment and clean-up. We have several different programs that have been very successful. And we plan to model this program along the lines of how we run that one, in terms of a competitive process and reviewing applications; and reviewing applications not just by ourselves, but with a panel of other Federal agencies who have relevant expertise, whether it is Treasury on tax and financial issues, or Interior on land-use issues, things like that. So it is not going to be us alone.

Second, we actually do have some experience on financial matters, because we have the Clean Water State Revolving Loan Fund, and the Drinking Water State Revolving Loan Fund. So we have a team of people at EPA who are extremely well versed in the issues of bonding and those kinds of things.

So one part of the answer is we have a lot of experience in these issues. And two is, it is not just alone; it is going to be us and other agencies.

Chairman HOUGHTON. Fine. Thanks very much.

Mr. Hayworth.

Mr. HAYWORTH. Thank you, Mr. Chairman. Gentlemen, thank you for your time today and coming in to visit. One of the advantages of a hearing format like this is that we talk, obviously, about the matter of most concern in terms of taxation and tax policy and where we are heading, in terms of the environment.

But there are also some housekeeping notes that I would be remiss if I did not share with each of you gentlemen. If you gentlemen would go back to your respective secretaries and directors, and pass along this helpful hint: When a Member of Congress writes them a letter directly requesting a response, that duly elected, constitutional officer is entitled to an acknowledgement of the receipt of the letter.

I have sat here and my colleague to my left—figuratively speaking—I was pleased to see that departing Secretary Rubin was courteous enough to write him back. On several occasions, I would write Secretary Rubin, and he would fail to respond. And Mr. Bur-

man, perhaps now, with Secretary Summers, we will see an improvement in that relationship. But perhaps Secretary Rubin, in preparing to return to the private sector, rediscovered responsiveness to be to his benefit. And I am glad that he responded to my friend, Congressman Hulshof.

On several occasions, I wrote to Director Browner. Letters were referred to other folks. I finally had an oral communication with her the night of the State of the Union Message, and she responded that, "Oh, yes, I have let other people know about it." But it is just good sense and common courtesy to respond directly to the member that the communication is acknowledged and other people are working on it.

Mr. Wilson, with reference to the EPA—and I do not want to get too far afield—let me thank your agency for packing up and leaving New River, Arizona, as the regional office did in San Francisco. Because once that happened, we were able to solve the problem affecting the people of New River. And that may be the subject of oversight for another Committee at another time in another venue. And we appreciate all three of you gentlemen coming down.

A point I would like to make here today deals with overall tax policy, especially in the wake of the President, who did have the courtesy to communicate his veto to us last week of broad-based tax relief. It deals with the death tax. The sixth district of Arizona in square mileage is about the size of the Commonwealth of Pennsylvania. And while there are urban areas there, there are vast reaches of rural lands and lands that have been preserved, and also lands that have been farmed and ranched.

And this death tax, and our failure to repeal it, present a major obstacle to the family farmers and ranchers in my district. And I think we have seen this nationwide. These folks want to pass their land and their assets—in essence, their family businesses—on to their heirs. The imposition of this death tax too often forces large parcels of environmentally valuable land to be sold off in smaller, and some would say less environmentally friendly, parcels.

That is especially true in Arizona. And again, in my district there is great diversity. Yes, as you might suspect, a fair amount of desert; but also, cotton farms, dairy farms, cattle ranches, that have run for generations. And the sad fact is, now there are many fewer of these enterprises than there were when I was elected in 1994.

Time and again, when I go to my constituents and ask them why the change, they tell me this death tax is to blame. The patriarch of the family passes away; the family has no choice but to liquidate their assets to pay the tax. And the irony is that virtually in every case, to liquidate the estate, the land is sold and it is developed. Never again will it be prime farm land or ranch land. It becomes part of the problem of urban sprawl.

The bottom line is this, gentlemen. We appreciate your attendance here today. And, my colleagues, I think we have to ask this question: How can anyone testify that this administration really seeks to preserve the environment? Just last week, with his veto of death tax repeal, the President took off the table what I believe to be the most effective weapon to reduce the single most prominent factor in breaking up family-owned farms and ranches. Be-

cause, as we have seen, and as I see acutely in Arizona, we have over-development and ever-increasing sprawl, because families have no choice.

And with that, I thank the Chairman, and yield the balance of my time.

Chairman HOUGHTON. OK, thanks very much.

Gentlemen, thank you very much for being on our panel. We certainly appreciate your time.

I would like to call the third panel: Ms. Jean Hocker, president of the Land Trust Alliance; Michael Dennis, vice president and general counsel of the Nature Conservancy; Charles Bartsch, senior policy analyst, Economic Development, of the Northeast-Midwest Institute; John Lincoln, board of directors, American Farm Bureau Federation; and Christopher Miller, president of the Piedmont Environmental Council in Virginia.

Well, thank you very much for being with us. Ms. Hocker, would you like to begin the testimony?

**STATEMENT OF JEAN HOCKER, PRESIDENT,
LAND TRUST ALLIANCE**

Ms. HOCKER. Yes, thank you very much. Mr. Chairman and Members of the Subcommittee, I really appreciate your holding this hearing. It is important to us, and to the country.

I am Jean Hocker. I am president of the Land Trust Alliance, which is the national umbrella organization for local and regional land conservation organizations that are known as land trusts. These are the grassroots groups, by and large—some small—some large, that are working with landowners all across the country to help protect open space in their communities. Together, these grassroots groups have protected over 4 million acres—actually, nearly 5 million acres—of open space.

The Ways and Means Committee has helped enormously in this work through the tax incentives that you have initiated over the last 25 years. But with sprawl overtaking open space in communities all across the country, there is a lot more that needs to be done and that can be done.

I do want to thank Representatives Johnson and Portman and Dunn for sponsoring legislation to provide additional tools for conservation in the Tax Code, and to thank those members who have joined them in sponsoring their bills. I have included a chart with my testimony that enumerates and summarizes all of those. And it is truly an impressive collection of tax proposals to support open space, so we thank you.

I want to focus on two of those proposals today, although many of them are worthy of support. The first is section 2(a) of Representative Johnson's bill, H.R. 2263, which would make the provisions of the American Farm and Ranch Protection Act apply uniformly to conservation land in every part of the country. Currently, those provisions are limited to certain areas. We think they ought to be available to all landowners who want to protect their land, regardless of where they live.

As you know, the Farm and Ranch Protection Act—which Mr. Houghton, we thank you for, and others on the Committee who helped pass it into law in 1997—now section 2031(C) of the Code,

does two really very important things. First, it provides for an election to exclude from the taxable estate to 40 percent the value of land subject to a qualified conservation easement. And second, this Act allows the executor of an estate to grant a qualifying conservation easement on property after the decedent's death, and thus to receive these benefits.

Now, I want to digress for just a minute here. I do know that many Members of this Subcommittee are committed to ending the estate tax altogether, and that the tax bill Congress passed several months ago would have done that. But let me point out, as you know, that that bill would have taken 10 years to totally eliminate the estate tax. And I want to point out how much 10 years can do to land that deserves conservation.

Of the 2.3 million acres protected by conservation easements held by local and regional and national land trusts, 80 percent of those easements have been put in place in the last 10 years. So even if the next decade is the last one for estate taxes, it is going to be too late for a lot of land that needs to be protected. Our focus now is on tools that will get land protected in the next decade, because after that a lot of important lands will not be available for protection.

The tools in the American Farm and Ranch Protection Act are limited currently to the lands only within 25 miles of a metropolitan statistical area or a national park or wilderness area. They should be extended to all parts of the country. Indeed, it is the lands that are just outside the envelope of intense pressure today that we should be targeting for protection. These are the lands that will be under pressure very quickly, if recent history is any guide. We should encourage vision and foresight by those landowners that want to protect them today, not penalize them.

Likewise, the post mortem election is another very important conservation tool that gives heirs a choice now. Now, when Congress was considering the American Farm and Ranch Protection Act, the Joint Tax Committee raised some concerns—about potential costs. The results were the geographic limitations I referred to.

In my testimony and in front of you now is a map that shows the lands that are covered by the Act today, prepared by The Nature Conservancy in consultation with our staff. Sixty-four percent of the lower 48 states are covered, but landowners in 36 percent of the Nation are unable to use these tax incentives.

The tax bill passed earlier this year did include a provision that more than doubled the area, and that provision was scored by the Joint Committee on Taxation as costing \$175 million over 10 years. But even that map leaves a lot of holes in the country. Senator Baucus asked the Committee to score simply eliminating all of the geographic limitations, and the Joint Tax Committee said it would cost \$279 million over 10 years. I have attached that estimate to my written testimony. We think that this overstates the cost. But even so, it is a very modest cost for the land conservation it can deliver over the next decade.

The second issue I want to refer to briefly—is Representative Portman's H.R. 2880, which would reduce by half the capital gains tax on the sale of land or easements for conservation. Many landowners cannot afford to make outright gifts of land. But if they had

a choice between selling for development or selling for conservation, they probably would like to choose conservation. This provision would make that choice much easier for landowners. And I encourage you to make this change. It will be extremely important for conservation in this country. I believe it will lead to a great deal of conservation that would not take place otherwise.

In summary, let me just thank you again for your interest in this, for your action on land conservation, and for your ability to understand that the Tax Code of this country can have an important benefit for conservation. These tax incentives produce tangible, visible, and permanent results. You and your constituents will be able to see the lands that you have helped people protect as open space, and share in the joy of having protected this land for future generations. Thank you very much.

[The prepared statement follows:]

Statement of Jean Hocker, President, Land Trust Alliance

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to appear before the Subcommittee today, to discuss the impact of tax laws on environmental conservation and preservation. I am Jean Hocker, President of the Land Trust Alliance, the national organization that guides and serves the more than 1,200 land trusts in the United States. These are local and regional nonprofit conservation organizations that work with private landowners to protect open space in their communities through voluntary methods. Together, these grassroots groups have protected more than 4 million acres of open land all across the country.

The Ways and Means Committee has helped that work enormously over the last 25 years by initiating tax incentives that help landowners who want to protect open space. The existing incentives—charitable deductions for donations of land or of conservation easements, and recognition that those easements reduce the taxable value of a landowner's estate—are helping preserve open space in every part of the country.

But there is a great opportunity to help us do more. I want to thank Representatives Nancy Johnson, Rob Portman, and Jennifer Dunn for sponsoring legislation to provide additional tools for conservation in the tax code, and to thank those Members who have joined them in cosponsoring their bills. We are particularly grateful to Representative Johnson for her bill, H.R. 2263, which compiles a wide variety of measures which would help voluntary land conservation. I have included a chart with my testimony that summarizes the range of land conservation tax measures that have been proposed in this Congress. We applaud and support these efforts and your recognition that open land, once paved over, will never again be available as productive farms, ranches and forest land, or as critical natural areas and habitat.

Today I want to focus on two of those proposals, which we especially hope will soon become law.

The first is Section 2(a) of Representative Johnson's bill, H.R. 2263, which would make the provisions of the American Farm and Ranch Protection Act apply uniformly to owners of conservation land in all parts of the United States. Currently, the provisions are limited to landowners whose property lies within specifically-defined areas, leaving many critical conservation lands ineligible for its compelling conservation incentives.

The Farm and Ranch Protection Act, which Mr. Houghton and others on the committee helped pass into law in 1997 and which is now section 2031(c) of the Internal Revenue Code, does two very important things:

First, it provides an election to exclude from the taxable estate 40 percent of the value of open land subject to a qualified conservation easement. The exclusion, which is capped at \$200,000 today, rises to a \$500,000 cap in 2003.

Second, the Act allows the executor of an estate to grant a qualifying conservation easement on appropriate conservation property after the landowner's death, and thus to elect the benefits of Section 2031(C).

I know that many members of this subcommittee are committed to ending the estate tax altogether. The tax bill the Congress passed several months ago would have done that. But it would have taken 10 years to do it. That ten years can be critical to land conservation. Of the 2.3 million acres protected by conservation easements

held by local and regional land trusts, 80 percent were protected in the last decade. Even if the next decade is the last one for estate taxes, in ten years it will be too late for much of the farm and ranch land, forest property, and key habitat that is under pressure today or soon will be. We need to perfect the tools we have today, to make sure time does not run out for critical conservation parcels.

The tools provided by the American Farm and Ranch Protection Act are important ones. Currently they are available only to lands within 25 miles of a Metropolitan Statistical Area or a national park or federal wilderness area, or within 10 miles of a National Urban Forest. They need to be extended to all parts of the country.

Indeed, the additional exclusion provided in the Farm and Ranch Protection Act is of particular relevance for people whose land is just outside the envelope of today's immediate development pressure. For a farmer in this kind of area, whose land today may be valued for development at only 30 percent more than its value as farmland, a donation of a conservation easement may not yield a great deal in current income tax benefits. Yet this is precisely where it is most important for conservation to take place—where development hasn't already made inroads that will make it very difficult for farming, ranching, forestry, or wildlife lands—to remain. Section 2031(c) addressed just these situations, by allowing an extra reduction in the taxable estate where an easement reduces the value of lands by 20 percent or more. This encouragement ought to protect open space values wherever landowners want to choose conservation.

The other key provision of 2031(c) is the ability it gives heirs to land to consider conservation as an option. This provides something enormously valuable—a second chance at conservation. So long as we have an estate tax, 2031(c) gives the heirs to land the potential to plan for conservation, even when the previous owner, for whatever reason, failed to do that. This choice, too, ought to be fairly available to all heirs of conservation lands.

But when Congress was considering The American Farm and Ranch Protection Act, the Joint Tax Committee raised concerns about its potential cost. The result were the geographical limitations I referred to earlier. My testimony includes a map, prepared by The Nature Conservancy in consultation with our staff, showing where 2031(c) applies, and where it does not. The map shows that 65 percent of the lower 48 states are covered, leaving landowners in 45 percent of the nation unable to use these conservation incentives.

Unfortunately, it does not include areas where important conservation work needs to be done. Representative John Tanner's district, to take one example, includes seven National Wildlife Refuges—but the lands around those refuges are not covered by 2031(c). On close inspection, many members of the Ways and Means Committee will see that some or all of their districts are not covered under the current terms of 2031(c).

The tax bill which passed this year included a provision that more than doubled the area covered by 2031(c). It was scored by the Joint Committee on Taxation as costing \$175 million dollars over 10 years. But even that still leaves lots of holes in the map—places that aren't covered. Senator Max Baucus asked the committee to score simply eliminating the complex geographic limits. The Joint Tax Committee says it would cost \$279 million over ten years. I have attached that estimate to my written testimony.

We believe these estimates overstate the cost of applying the law across the country. But even if not, this is a very modest cost for the land conservation it can deliver by providing additional incentives for the donation of conservation easements.

The second issue I want to focus on involves the sale of land for conservation, because donations alone will not be able to protect every special place. Not every landowner can afford to donate land or a conservation easement on land. More and more, we find our members involved in the purchase of easements, or the purchase of fee title to lands. Increasingly, they are working with local governments in this effort.

Last November, 143 referenda were on local and state ballots to provide funding for acquisition of lands and easements to protect open space. Of those, 124 won—84 percent. Many were general obligation bonds. Many were direct votes on taxes to fund these programs. I have included in my testimony a copy of the results of those elections. The total funding committed in the measures that passed exceeded \$6.28 billion.

Since November, there have been a number of special elections for the same purpose. This November, Maine will vote on a \$50 million bond for land protection. Next March, there will be a \$2.1 billion environmental bond issue in California, and in November, 2000, a \$1.5 billion bond issue in the state of Washington.

It is wonderful that state and local governments are taking up this cause. You can help them, quite directly. Virtually every time a landowner sells property, or

sells a conservation easement on their property, they are paying capital gains tax on it—even though the sale is to a public entity, for a public purpose. Representative Portman's bill, H.R. 2880, would cut capital gains in half on such sales. It would be a boon to every single one of these jurisdictions, as well as to the landowners. There is probably no other single proposal that will have as direct an effect on local land conservation. When landowners are faced with a choice of buyer, this provision will encourage them to sell for conservation.

In summary, let me thank the subcommittee for this opportunity to ask your continued help to make the most of the opportunities we have to conserve the landscapes that people love and that they identify with their communities. The federal government has been a partner in that effort, through the tax code and in many other ways. Together, we have the opportunity to do more, and we ask you to help us. Tax incentives for conservation produce tangible, visible, permanent results. You will be able to see the lands that you have helped people protect as open space, and share in the joy of having protected that land for future generations.

Thank you.

[Attachments are being retained in Committee files.]

Chairman HOUGHTON. Yes, thank you, Ms. Hocker.
Mr. Dennis.

STATEMENT OF MICHAEL DENNIS, VICE PRESIDENT AND GENERAL COUNSEL, NATURE CONSERVANCY, ARLINGTON, VIRGINIA

Mr. DENNIS. Thank you, Mr. Chairman. The Conservancy appreciates the opportunity to speak with you today. And also, our sincere thanks to you for having the foresight to support and sponsor the American Farm and Ranch Protection Act, a very important piece of legislation.

I am the general counsel and land acquisition director for The Nature Conservancy. The Nature Conservancy is a global conservation organization that identifies and protects important habitats for plants and animals. We use a full array of protection tools: We buy land outright; we acquire gifts of conservation easements; we negotiate management leases; and more and more, we are working with local communities to build conservation capacity within the local community.

A couple of examples of types of projects that we work on: In the North Woods in the Adirondacks, over the past decade we have protected several hundred thousand acres of lands, using the deductible conservation easement as a tool.

Recently, in Arizona we acquired a cattle ranch, the San Rafael Cattle Co., which is right down on the Mexican border. And we are in the process of transferring a conservation easement to the State of Arizona. And then we are selling the ranch, with the restriction that it cannot be developed but it can be ranched. And we are blending protecting the natural resources with ranching. And of course, with the easement on the property, it substantially reduces the purchase price, so a rancher can come in and afford to keep ranching.

Another project that I work on extensively is referred to as the Malpai Borderlands Group. This is an area of the country in the Southwest, the foothill of New Mexico and the southeast corner of Arizona, right on the Mexican border, where we have helped set up a local land trust. The trustees are all local ranchers. And working

with them, we are experimenting, and actually successfully utilizing a whole bunch of new conservation techniques: grass banks in exchange for easements, low-interest loans. The whole thrust of the program is to keep the ranchers on the ground. Hopefully, they will have a viable ranching operation, and it will be done in a way that is consistent with protecting the landscape. And this has been a very successful program.

And I might add, a couple of you may pick up the accent: I am from Boston. And the first time I went down there, there was one other Bostonian who had located down there. And they all thought he had a speech impediment, until they heard me talk—and then they figured we all talk this way.

That was a joke, by the way. [Laughter.]

Mr. DENNIS. Thank you. We are losing species in open space at alarming rates, as everyone knows. And while the Conservancy over the past 15 years has protected, with its partners, over 6-million acres of land, it is an uphill battle.

We have done a “back-of-the-envelope” estimate, and we figure, although we are only looking at targeting less than 5 percent of the landscape, it could cost in excess of \$10 billion over the next decade. We clearly need additional tools, protection tools. And that is why we are here, The Nature Conservancy is here today, in support of tax incentives for conservation.

In my written testimony we talk about three different categories of tax incentives. One group is incentives that will encourage landowners to sell or exchange or donate conservation lands to conservation agencies, public and private.

Another category is tax incentives that would encourage a private landowner to take certain actions on his or her land to enhance it as conservation land and provide some type of tax credit or deduction. For example, if one were to do wetland restoration on one’s land, they would get a tax credit for that activity, for those expenses.

The third category is enhancing some of the estate tax rules—death taxes, as Congressman Hayworth had referred to them earlier—and enhancing section 2031(c), as has already been mentioned here a little earlier today.

I would like to highlight one particular provision, and that is in H.R. 2880, which has been sponsored by Congressman Portman. This is the provision that excludes one-half of the capital gain on a sale of conservation land to a conservation agency. We think this is a very important provision. It is voluntary. It actually is a provision that benefits people who cannot afford to make gifts. The only provisions in the Tax Code right now for conservation are oriented toward wealthy people who can make gifts. This is a provision for people who cannot afford to make gifts.

And it would apply to sales of conservation restrictions. With many of the projects that I am doing down in the Malpai region this would be an additional incentive for a rancher to transfer it to sell restrictions on his or her ranch and to continue ranching.

And finally, the cost factor on this was about \$65 million a year, and we think it will leverage \$85 million to \$100 million a year in conservation.

In closing, I wear a lot of hats in the conservation community. I am from Boston, and I started out as a general counsel for The Nature Conservancy; I still am. I am also the general counsel for the Malpai Borderlands Group. And I have served as council member of the North American Wetlands Conservation Council since its inception.

All three of these organizations operate a little bit differently. But the thing that binds all three of them is, No. 1, they are all interested in protecting the landscape; and No. 2, these tax incentives that we have proposed today in the written testimony and that you have heard about today, all of them, will enhance their ability to do a better job in protecting the landscape.

We appreciate the opportunity to testify, and we are available to work with any of you who would like to pursue these further. Thank you very much.

[The prepared statement follows:]

Statement of Michael Dennis, Vice President and General Counsel, Nature Conservancy, Arlington, Virginia

Mr. Chairman and Members of the Committee, thank you for the opportunity to present testimony on the critically important issue of tax incentives for land conservation. I am speaking today on behalf of The Nature Conservancy, a private conservation organization that protects the land and water needed to protect the diversity of life on earth. For nearly half a century, we have worked with the private sector, using the tools of the market place and the best available scientific information, to conserve the special places that ensure the survival of plant and animal species. To date, we have helped protect more than 10 million acres of land in the United States. Our experience working hand-in-hand with landowners in diverse communities has led us to seek changes in the federal tax code that would more effectively encourage and reward private conservation actions.

I am here today to explain the federal tax code changes that The Nature Conservancy recommends, and which would provide the most benefit for land conservation. I will present a fairly comprehensive set of recommended changes for the committee's consideration. These proposals are based on input from field staff who work with landowners on a daily basis and understand the major obstacles to land conservation. Among these various proposals, our top priority is the capital gains exclusion for sales of land for conservation purposes. This proposal, discussed in more detail below, was introduced in the House and Senate as the Conservation Tax Incentives Act of 1999 and enjoys bipartisan support.

THE CONSERVATION PROBLEM: PRESERVING QUALITY OF LIFE

Healthy communities are made up of complex systems of forests, wetlands, deserts, productive soils, rivers and other interdependent resources. The cumulative effect of seemingly unrelated activities such as deforestation, the paving over of agricultural land, the filling in of wetlands and urban sprawl has been to fragment the landscape and strain the fabric of wild and human habitat. The sustainability and quality of life in every region of the country is in danger. The rate of the development of land exceeds by far both the rate of population growth and the rate of open space conservation.

THE LANDOWNER'S PROBLEM: SAFEGUARDING FINANCIAL AND ENVIRONMENTAL ASSETS

Federal and State environmental protection laws and regulations such as the Endangered Species Act, the Clean Water and Clean Air Acts, are important tools to help preserve the environmental quality of land, but they can place economic and regulatory burdens on individual landowners. Government cannot, and should not, have the sole responsibility for maintaining and preserving the public benefit of open spaces. If conservation efforts are to succeed, private landowners must be active and willing participants. In the United States, approximately 70 percent of the land is privately owned. Well over half of all imperiled species are found on private land, and many exclusively so. The species found on private lands are declining more rapidly than are those on publicly held lands.

Landowners have a stake in the quality of their community's environment. They also have a right to realize economic benefits of their investment in land. Tax incentives for conservation provide a mechanism for meeting both of these interests.

SOLUTION: TAX INCENTIVES

Two kinds of tax incentives for conservation currently exist in the federal tax code. One provides an income tax deduction for charitable contributions of partial interest in land for conservation purposes; the other provides an estate tax exclusion for gifts of conservation easements in certain geographic areas. These benefits can make it possible for landowners to meet both conservation and financial goals if they have an income sufficient to utilize the tax deduction. But there are many landowners with income too low, or land so valuable, that these provisions are not financially beneficial. For example, for many farmers near metropolitan areas the fair market value of their land is a primary financial asset that cannot be relinquished. Market conditions can mean that the sale of the land for development is the only viable choice in order to realize a full economic return.

Existing conservation tax incentives are important but, given the rate at which land is disappearing and species are lost, they are not sufficient. New tax incentives are needed to encourage the protection of additional private lands. To address this need, The Nature Conservancy supports a range of conservation tax incentives that fall into three general categories:

1. Incentives to encourage the sale, gift or exchange of land or easements for conservation;
2. Incentives to encourage private land to be managed for conservation benefits; and
3. Incentives to prevent the break-up of large land-holdings.

Within each of these categories, we have proposed specific tax changes that will provide benefits to both landowners and conservation. They are as follows:

(1) *Incentives to Encourage the Sale, Gift or Exchange of Land or Easements for Conservation*

(a) Capital Gains Reduction for Conservation Sales. This proposal, which would be implemented by H.R. 2880, would reduce the amount of capital gains tax if land is sold for conservation purposes, thereby providing a landowner with a more attractive financial return from such sales.

H.R. 2880, sponsored by Congressman Rob Portman, and cosponsored by Congresswoman Nancy Johnson and Congressmen Robert Matsui and John Tanner, is The Nature Conservancy's top priority.

I would like to congratulate Congressman Portman for his leadership on this issue. His legislation is a fiscally conservative, market-based approach to land conservation. It achieves environmental objectives without imposing new land use regulations. The provision is strictly voluntary, administratively simple, and uses definitions and tests for conservation purposes that are already contained in the tax code. It provides capital gains tax relief for sales of land for conservation to government agencies or qualified conservation nonprofits. The bill would allow landowners to preserve permanently their property's environmental value without foregoing its financial value. It would exclude 50 percent of any gain realized from private, voluntary sales of land or interests in land for conservation. The land must be used to protect fish, wildlife or plant habitat or open space for agriculture, outdoor recreation or scenic beauty.

Congressman Portman's bill also helps state and local governments leverage funds and accomplish more with their tax dollars. Estimates indicate that, for every dollar of lost revenue from this tax provision, almost two dollars worth of land would be protected. Sales of land to state and local governments for conservation would qualify, in addition to such sales to federal agencies and conservation nonprofit organizations. Citizens who vote to increase their taxes to fund bonds for land conservation will benefit because the funds raised will go farther toward reaching the community's conservation goals.

(b) Increase the Value of Gifts of Land or Easements Made for Conservation. This proposal would change the individual and corporate charitable giving laws to make the tax value of conservation gifts more valuable, particularly for the "cash poor-land rich" landowner.

Congresswoman Nancy Johnson's legislation, H.R. 2263, would promote this objective by increasing from 30 percent to 50 percent the amount of the taxpayer's adjusted gross income that could be offset by a conservation donation, and by allowing the unused deduction to be carried forward indefinitely. The Conservancy strongly supports this legislation.

(c) Enable Conservation Transactions to Qualify for Low-Cost Financing. This provision would allow conservation organizations to qualify for tax-exempt financing or to issue tax-exempt installment obligations to a seller when purchasing land.

The Community Forestry and Agriculture Conservation Act of 1999 (H.R. 1863), sponsored by Congresswoman Dunn, would create a targeted version of this incentive. It would allow tax-exempt financing of working timber and agricultural lands by nonprofits, requiring permanent conservation easements to ensure sustainable use of the land. The Nature Conservancy endorses this proposal, and commends Congresswoman Dunn for her leadership in this legislation.

We recommend broadening the legislation with a slight modification so that it would apply not only to the acquisition of working lands, but also to the acquisition of other conservation lands. We would like to see this type of tax-exempt financing used for any conservation land acquisition made by qualified land trusts and conservation organizations. This change could be accomplished with small additions to HR 1863. The Conservancy would be happy to work with Congresswoman Dunn to develop such language.

(d) Encourage Private Capital to Make Investments in Conservation Land. The basic idea is to create incentives (greater deductions, tax credits or loan guarantees) for private, third party financing for conservation transactions; for investments in geographic areas (ecological enterprise zones); or incentives to match conservation "investors" who would buy tax-favored conservation easements with landowners in need of cash and willing to give up such easements.

(e) Change Corporate Liquidation Rules Where Conservation Lands are Involved. This proposal would allow small corporations whose primary asset is land to donate such land for conservation purposes without triggering a tax, as is the case under current law.

(f) Revise the Rules for Land Exchanges Where Conservation Lands are Involved. This revision would lengthen the time for qualifying exchanges and/or broaden the types of property that could qualify for treatment as a like-kind exchange involving conservation lands.

(2) *Incentives to Encourage Management of Private Land for Conservation*

(a) Make Conservation Management Expenses More Valuable for Private Landowners. Provide tax credits for habitat management expenses such as prescribed burns, exotic species removal, riparian and habitat restoration.

(b) Provide Habitat Conservation and Management Insurance. Create a subsidized insurance program whereby landowners who agreed to manage land in furtherance of a conservation plan would be held harmless (using the insurance proceeds) from the potential loss in value of their land from implementation activities under the plan.

(c) Make Private Ownership of Conservation Land Affordable. Make property taxes paid on land subject to conservation easements eligible for treatment as a tax credit.

(3) *Incentives to Prevent the Break-Up of Large Land-Holdings*

(a) Provide Estate Tax Relief for Conservation Landowners and their Estates. Extend the geographic application and financial benefits of recent estate tax changes to encourage conservation. Allow estates with conservation lands to donate a conservation easement and use the value of such an easement to offset the estate tax that would otherwise be due.

The American Farm and Ranch Protection Act, now section 2031(c) of the federal tax code, was sponsored by Chairman Houghton, endorsed by The Nature Conservancy, passed in 1997 and was expanded in 1998. This legislation was the first new tax incentive for conservation since the enactment of the conservation easement donation incentive in 1976, and it has the potential to save a great deal of land that would otherwise have been subdivided and sold for development in order to pay estate taxes. We support efforts to perfect and strengthen 2031(c) so that it can realize this potential.

First, we have estimated that approximately one third of the continental U.S. is currently not covered by the statute. The current boundaries omit critically important areas with national natural resources. For example, National Wildlife Refuges, BLM designated lands of critical environmental concern, Wild and Scenic River designated areas, and other categories of Federal resource lands are excluded by the geographic restrictions. There is no clear rationale for omitting these lands from those included in the Act. In addition, land in or near state and local protected areas are not included even though they may be under severe pressures.

The land that is excluded from coverage under the Act is likely to have, on average, low fair market values because it is located in predominately rural areas. Therefore, the marginal cost of including such land under the statute should be

small. This small cost to the public is greatly outweighed by the land conservation benefits to be derived.

Finally, the American Farm and Ranch Protection Act's effectiveness would be substantially improved if the financial limitations on its use were removed. With the caps in place, the provision has a limited ability to serve as a conservation incentive on large landholdings that may have values inflated by nearby development. These are the very resources that the original legislation intended to reach.

(b) Provide Incentives Against Habitat Fragmentation Actions. Create incentives to prevent open land from being converted or fragmented; reward landowners who refrain from habitat fragmentation causing actions and seek to remove existing incentives in the tax code that encourage landowners to subdivide and fragment their lands.

CONCLUSION

Land conservation is a growing national need. Private landowners hold the future of biodiversity in their hands. The tax incentives the Conservancy recommends would provide interested landowners with the tools to conserve their land and contribute to the public interest in the preservation of the diversity of life.

We appreciate the leadership of Congressmen Portman and Congresswomen Johnson and Dunn and encourage the other members of Congress to support the innovative, voluntary tax proposals that we are discussing today.

Chairman Houghton, as the House sponsor of the American Farm and Ranch Protection Act, deserves our thanks for this and other advances in land conservation legislation. The Conservancy is eager to work with the Chairman and other members of this committee in support of new tax incentives for conservation. Thank you for the opportunity to present testimony before you today.

Chairman HOUGHTON. Thanks, Mr. Dennis.
Mr. Bartsch.

STATEMENT OF CHARLES BARTSCH, SENIOR POLICY ANALYST, ECONOMIC DEVELOPMENT, NORTHEAST-MIDWEST INSTITUTE

Mr. BARTSCH. Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify. I am Charles Bartsch, senior economic development policy analyst at the Northeast-Midwest Institute. And my focus in the next few minutes will be on issues relating to the brownfields expensing tax incentive.

Since 1991, the Institute has worked closely on brownfield issues with the bipartisan Northeast-Midwest Congressional Coalition, which is currently chaired by Representatives Bob Franks and Marty Meehan. And we have examined site reuse activities in more than 50 cities in New York and Pennsylvania and Ohio and other States. A key focus of this analysis has been the link between environmental contamination and economic development.

First, how has the brownfields issue changed, and why do we need an incentive? Well, during the last few years, the way in which we deal with brownfields has evolved, as States and communities have gained more familiarity with the environmental aspects of brownfield situations. Now it takes on more of an economic development, dollars-and-cents urgency in most places. Costs and financing have emerged as the common predominant concerns that prospective site users must address.

According to case studies from Cleveland and elsewhere, total site preparation costs per acre for long-time industrial sites in inner city areas can be quadruple those of a site of the same size in a new pristine development. And in fact, the mere presence of

contamination has increased the time and effort needed to put financing packages together, which has increased lending costs more than threefold in real-dollar terms since 1980, according to some bankers. So clearly, financing gaps are a primary deterrent to reuse.

Second, how has Congress addressed these critical financing issues? Congress has recognized that no single approach fits the financing needs of all brownfield projects, which vary by project situation and type of developer, level and type of contamination, and the needed rate of return.

Bipartisan efforts to explore various ideas date back to the 104th Congress. At that time, the link between environmental concerns and real estate markets and financing emerged, and it became clear that new approaches would be needed to address this issue. And in fact, several Members of this Oversight Subcommittee were active early on. In the 104th Congress, for example, Representative Coyne first advanced his proposal to establish tax credits to offset site remediation expenses. In mid-1995, Representative Weller cosponsored Mr. English's bill that proposed two tax incentives to encourage clean-up of contaminated sites. And Chairman Houghton cosponsored a bill in early 1996 to allow brownfield clean-up costs to be deducted from income in the year that such costs occur, which is really the forerunner of the existing brownfield expensing incentive.

In August 1997, as part of the Taxpayer Relief Act, Congress approved a potentially significant brownfield expensing tax incentive, which is just now starting to work its way into the redevelopment process and mindset. Its quicker cost recovery was intended to help offset the cost of site clean-up and level the economic playingfield between brownfields and greenfield sites which do not have to bear such costs.

Third, what role have tax incentives played in brownfield reuse? Brownfield incentives have objectives similar to traditional tax incentives for economic development purposes. They aim to overcome capital market imperfections and channel economic activity to achieve the greatest possible public benefit.

At the State level, tax incentives have played a major role in strategies to promote brownfield reuse, and they show how Federal efforts could enhance site redevelopment. About 22 States have some sort of brownfield tax incentive or tax credit initiative in place. And these programs, in combination with other public sector brownfield initiatives, have really started to tally some encouraging results, according to an Institute survey of State program managers.

For example, Missouri has approved \$16.5 million in tax credits for 13 sites, where new business activity has created 2,000 jobs. Ohio's efforts have brought more than 1,400 acres of brownfields back to productive use, creating about 7,100 jobs. Pennsylvania's program has encouraged clean-up of some 7,000 acres in 60 of the State's 67 counties, leading to nearly 15,000 new jobs at more than 300 sites. And other States have seen similar results.

So clearly, resources for clean-up are a paramount need. And clearly, tax incentives have stimulated brownfield reuse, as the

track record from the States suggests. So why has the Federal brownfield expensing provision gotten so little use so far?

Only a couple of dozen sites have used the incentive as of summer 1999, and there are several key reasons for this. Initially, Federal agencies were slow to market the incentive, and they may have misjudged the willingness and ability of the private development market to make an effort to understand how it could work and the benefits it could bring to a project's bottom line.

Although EPA and HUD have provided ample information, many in the private development industry were skeptical, because they saw the credit as cumbersome, with requirements that could trip them up. And no developer wants to be caught in a "Gotcha" situation. Essentially, the real estate developers who are viewed as key players in brownfield reuse and prime targets for the brownfield incentive simply do not operate in terms of Census tracts and poverty levels, and their education process is taking a long time.

If I could just have a few more seconds, please.

Chairman HOUGHTON. Very well.

Mr. BARTSCH. And now the incentive sunset date poses a deterrent to more widespread use. Local economic development officials are concerned that the 15 months remaining is not time enough to carry out reuse projects, and this makes them hesitant to promote the incentive's use.

Finally, why should the incentive be retained and made permanent? Let me offer three reasons: First, for purposes of both planning and comfort, developers and investors need the certainty that permanence will bring. Given the length of time that it can take to get large-scale multi-year projects underway and completed, permanence means that the developer can count on the incentive, even if unanticipated delays slow down the redevelopment process.

Second, the brownfield expensive incentive is one of the few redevelopment tools that focus on the private-sector side of the reuse equation, and provide help in meeting clean-up costs, the No. 1 financing need of most brownfield sites.

And third, after a slow start, Federal agencies' technical assistance and outreach capabilities, such as site and Census tract maps and support for State agency staff, are now in place to promote and implement the program and allow it to move toward the \$1.5 billion level authorized in 1997.

I have got more examples and information in my written statement. I thank you for the extra time, and I thank you for the opportunity to speak. And I look forward to your questions.

[The prepared statement follows:]

**Statement of Charles Bartsch, Senior Policy Analyst, Economic
Development, Northeast-Midwest Institute**

Mr. Chairman and Members of the Oversight Subcommittee, thank you for the opportunity to testify about the financing issues affecting the productive reuse of older, often contaminated industrial and commercial sites. I am Charles Bartsch, senior economic development policy analyst at the Northeast-Midwest Institute. Since 1991, the Institute—working closely with the bi-partisan Northeast-Midwest Congressional Coalition, currently chaired by Reps. Bob Franks and Marty Meehan—has examined the relationship between environmental contamination and economic development. At that time, we recognized the severity and potentially devastating impact of neglected brownfield sites on long-established communities with a legacy of manufacturing. Both organizations began to identify case examples where environmental and redevelopment obstacles had been successfully addressed.

The issue has come a long way since then; as this hearing underscores, many Members have worked hard this year to bring brownfields to the Congressional front burner.

The Institute has analyzed site reuse activities in more than 50 jurisdictions—large cities like Pittsburgh, Chicago, Dallas, Los Angeles, Seattle, and Cleveland; mid-sized cities like Buffalo, Kansas City, Sacramento, and Worcester; and small towns like Meadville, Pennsylvania, Glen Cove, New York, and Wyandotte, Michigan. Our research has indicated that, while the problems surrounding reuse of contaminated sites are critical ones in the nation's traditional industrial centers, they are by no means confined to such communities. The issue of brownfields is widespread, having surfaced in every state across the country, and in numerous small towns as well as most large cities. To meet it, communities need practical tools and approaches with broad applicability and appeal.

What are the key issues surrounding brownfield sites?

Successful brownfield reuse projects must overcome several critical barriers, which have been well documented. These include the lack of process certainty and finality; liability concerns; added expenses of environmental cleanup; and lack of redevelopment financing resources available for brownfield projects.

The brownfield issue has evolved over the past few years, as states and communities have gained more familiarity with the environmental aspects of brownfield situations, and it has taken on more of an economic development urgency in most places; cost and financing have emerged as the common, predominant concerns that prospective site users must address. The procedural and legal steps needed to address brownfield barriers—testing, acquiring, cleaning, and redeveloping contaminated older sites—can be complicated, expensive, and time-consuming.

In practice, the brownfield reuse issue boils down to one of simple dollars and cents. In one scenario, a developer can acquire an untouched greenfield site, probably in a new industrial or business park far from the central city, and build a facility to suit with minimal fuss. Or, that same developer can acquire a previously used site in an old, often abandoned central city industrial district. The latter site, almost assuredly a brownfield, is probably available at little or no cost. However, the developer will then need to spend time and money having it tested to determine exactly what substances it might contain, spend time and money cleaning it up and preparing it for construction, spend months pleading with bankers to lend on it, and likely spend more time and money for additional documentation and site monitoring. According to case studies from Cleveland and elsewhere, in fact, total site costs per acre for long-time industrial sites in inner city areas can be quadruple those of a site of the same size in a new exurban development.

What is the real-dollar impact of this contamination?

Cleaning up contamination adds to the cost of any reuse project, often significantly. In fact, in most areas adequate financing to carry out both cleanup and redevelopment activities is not available at affordable costs. This drives development to greenfield locations in undeveloped areas, away from established economic and population centers. The mere presence of contamination has increased lending costs—more than three-fold in real dollar terms since 1980, according to some bankers. More time and staff work is required to put financial packages together, and prospective borrowers must pay for environmental assessments and more detailed appraisals—before they even begin the cleanup process.

This undermines efforts to revive brownfield sites in two ways. On one hand, higher transaction costs can make loans prohibitively expensive to obtain, particularly for small business owners or prospective purchasers with no collateral other than the site itself. On the other hand, depending on the extent and type of contamination, cleanup costs often exceed \$50,000 and may top \$1 million or more. While new insurance products can help guard against costly surprises during the remediation process, they do not reduce the initial costs. And these up-front expenses are not easily recovered as part of the normal course of doing business, placing brownfield sites and facilities at a tremendous competitive disadvantage with greenfield locations.

Clearly, financing gaps are a primary deterrent to reuse. However, the public sector can do much to help balance the playing field between greenfield and brownfield sites. Creatively designed and carefully targeted incentives and assistance can help advance cleanup and reuse activities and achieve significant community benefits.

How has Congress addressed critical financing issues?

Members from both parties began exploring ways to address specific financing barriers to brownfield development back in the 104th Congress. At that time, the

link between environmental concerns and real estate markets and financing emerged, making it clear that new approaches would be needed to address this issue. Several Members of this Oversight Subcommittee were active early on; in the 104th Congress, for example, Rep. Coyne first advanced his proposal (HR 2846) to establish tax credits to offset site remediation expenses. In mid-1995, Rep. Weller introduced a bill (HR 1799) proposing two types of tax incentives to encourage clean-up of contaminated sites. Chairman Houghton co-sponsored a bill in early 1996 (HR 2919) to allow brownfield cleanup costs to be deducted from income in the year such costs occur—the forerunner of the existing brownfield expensing incentive.

In the 105th Congress, Members introduced nearly 30 different bills dealing with some aspect of the brownfield financing or re-development processes. These efforts laid a good foundation for the ongoing consideration of legislative answers to complex brownfield questions in the 106th Congress; Members of both parties have introduced nearly a dozen bills already this session. This activity cuts across many committees and transcends party and ideology; bills offered by both Republicans and Democrats have similar—often identical—objectives and approaches. Conceptually, there is a lot of agreement on ways to meet critical brownfield process and financing needs.

Over the past five years, Congress has recognized that no single approach fits the financing needs of all brownfield projects, which vary by project situation, type of developer, level and type of contamination, and needed rate of return. In general, bills to support brownfield financing have fallen into one of three broad categories:

- process related initiatives, to offer further protection to prospective purchasers and adjoining landowners, which can play a critical role in determining whether brownfield redevelopment financing is secured;
- direct capital support efforts, typically taking the form of grants for site assessment, planning, and to capitalize revolving loan funds for actual site cleanups themselves—activities usually not financed by private sources; and
- tax incentives, which can help attract affordable private investment and provide a cash-flow cushion for companies undertaking brownfield reuse projects.

In August, 1997, Congress approved a potentially significant brownfield tax incentive, which is just now starting to work its way into the redevelopment process. Known as the brownfield expensing provision, it allows new owners of brownfield sites to write site clean-up costs off their taxes in the year they incur them, rather than having to capitalize them over a longer period of time. This quicker cost recovery is intended to help level the economic playing field between brownfield and greenfield sites, which don't have to bear such costs. Currently, the expensing incentive—scheduled to sunset at the end of 2000—is the focus of a couple of bills.

What role have tax incentives played in brownfield reuse?

Incentives focused on brownfield sites have similar objectives to traditional tax incentives for economic development purposes—they aim to overcome capital market imperfections and channel economic activity to achieve greater public benefits. Incentive programs can enhance a project's cash flow, by allowing revenue to be used for site cleanup and redevelopment activities, rather than for taxes or other purposes. This, in turn, can help a project's financial look in the eye of a lender. Tax incentives focused on environmental cleanup and reuse could help level the economic playing field between old brownfield sites and new greenfield locations.

At the state level, tax incentives have played a major role in strategies to promote brownfield reuse, and they show how federal efforts could enhance site redevelopment. About 22 states have some sort of brownfield tax incentive or credit initiative in place, notably the following.

- Ohio is working to level one aspect of the site selection playing field by offering a state franchise or income tax credit for Phase I and II assessment and cleanup costs. Site owners can claim the lesser of 10 percent or \$500,000 for these purposes.
- Illinois provides a 25 percent income tax credit of up to \$150,000 per site, available to developers who spend at least \$100,000 to restore contaminated sites, and these credits are transferable to new owners. Florida offers a 35 percent credit, up to \$250,000 per site, which also is transferable.
- New Jersey brownfield site owners in designated Environmental Opportunity Zones can negotiate with local communities and arrange to use some of their annual property tax levy to cover up to 75 percent of their site clean-up costs, instead of paying it to local tax coffers.
- Missouri's brownfield redevelopment program offers a flexible “menu” of tax incentives, based on new investment and job creation, up to 100 percent of remediation costs.

In addition, Pennsylvania this year enacted its Keystone Opportunity Zone programs, in which all taxes may be forgiven for up to 12 years. And, Massachusetts

this year joined Wisconsin in offering remediation tax credits of up to 50 percent of cleanup costs.

These programs, in combination with other public-sector brownfield incentives, have started to tally some encouraging results, according to an Institute survey of state program managers. For example, Missouri has approved \$16.5 million in tax credits for 13 sites—on which new business activity has created 2,000 jobs. Ohio's efforts have brought more than 1,400 acres of brownfields back to productive use, creating about 7,100 jobs. Michigan's extensive brownfield incentive programs point to \$459 million in new private investment, including 750 housing units, that have generated nearly 5,500 jobs. Pennsylvania's program has encouraged cleanup of some 7,000 acres in 60 of the state's 67 counties, leading to nearly 15,000 new jobs at more than 300 sites. Colorado attributes more than 6,200 jobs and 2,800 residential units to the 146 sites that have gone through the state's voluntary cleanup program.

Why has the federal brownfield expensing provision gotten so little use so far?

Initially, EPA and Treasury had estimated that the \$1.5 billion in tax expenditure authority the 1997 law provided would be used at 30,000 sites over the three-year life of the incentive. However, only a couple of dozen sites have used the brownfield expensing incentive as of summer, 1999. There are several key reasons for this.

Initially, federal agencies were slow to market the incentive, and may have misjudged the willingness and ability of the private development market to make an effort to understand how it could work and the benefits it could bring to a project's bottom line. Although EPA and HUD made ample information on poverty and locational eligibility available to the public—including GIS maps and census tract data—many in the private development industry were skeptical because they perceived the credit as featuring complicated and cumbersome qualification and targeting requirements that could trip them up. Essentially, the real estate developers viewed as key players in brownfield reuse and prime target beneficiaries of this incentive simply do not operate in terms of census tracts and poverty levels, and the education process is taking a long time. In addition, it took a long time for developers to get comfortable with the notion that EPA actually wanted to be their ally in brownfield endeavors; their long-held views of the agency as adversary were slow to change. Many developers were reluctant to approach EPA and state environmental agencies to pursue the expensing incentive.

Now, the incentive's sunset date poses a deterrent to more widespread use. The closer we get to the end of December, 2000—when cleanups need to be completed to qualify—and the expiration of the credit, the less likely developers will attempt to use it. Local economic development officials are concerned that not enough time remains now to bring projects through the brownfield acquisition/cleanup/redevelopment phases in time for new users to take advantage of the incentive. This makes them hesitant to promote its use, even though it could play an important role in making specific sites more viable candidates for reuse. Similarly, even though more private developers now have a grasp of the incentive and its benefits, they are reluctant at this time to factor it into their project's financial calculations—brownfield redevelopment, especially on a large scale, is a complicated process, and they are concerned that an unforeseen delay in their project schedule will push them past the sunset date, and that they will have to forfeit the benefits they had anticipated.

In addition, private developers have noted that a couple of specific provisions of the expensing incentive also inhibit its use. One concerns lessors of facilities; while lease holders are technically eligible to take advantage of the incentive, in practice they are discouraged from using it because the law does not mention a specific length of lease term—which leads to uncertainty and discourages use. The law could be clarified to specify that new site users who opted for a long-term lease, say 30 years, would qualify for the incentive if they cleaned up the site they leased, even if they did not take title. This could encourage more private redevelopment activity on publicly owned sites.

A second provision that deters use of the expensing provision is the requirement that the recapture of incentive value be taxed as ordinary income. It discourages developers who will not be the end-users (such as those converting sites to retail or commercial use) from taking on brownfield sites. Since their business is real estate development and subsequent sale, this provision mitigates the benefits that the incentive brings. An alternative would be to tax the recapture as capital gains income, or allowing the incentive to be transferable to a new owner (as several states do), so that the developer could retain some of the value through its reflection in the purchase price.

Why should the incentive be retained and made permanent?

Clearly, the incentive has great potential and needs to be extended permanently, so that this tool can be better used to restore brownfields to productive, tax-and job-generating uses.

- For purposes of both planning and comfort, developers and investors need the certainty that permanence will bring. Given the length of time that it can take to get large-scale, multi-year projects underway and completed, permanence means that developer can count on the incentive, even if unanticipated delays slow down the redevelopment process.

- The brownfield expensing incentive is one of the few redevelopment tools that focus on the private-sector side of the reuse equation, and provide help in meeting cleanup costs—the number one financing need at most brownfield sites.

- After a slow start, federal agencies' technical assistance and outreach capabilities—such as site and census tract maps and support for state agency staff—are now in place to promote and implement the program.

To close, let me reiterate that site assessment and cleanup require financial resources that many firms lack and find difficult to secure. And without financing, brownfield reuse projects can not go forward, further undermining efforts to revive distressed, older industrial areas. The combined efforts of the public and private sectors will be needed to move properties into the realm of economic viability, and ultimately bring prosperity back to them. Therefore, Members of Congress are to be commended for their willingness to consider and promote different approaches to the complex issue of brownfield finance. While much attention is given to state and local initiatives, it is the federal government—whose programs, policies, and regulations form the foundation on which many state and local financing incentives—that must play a strong role if private financing for brownfield redevelopment is to become more widely available.

Thank you for the opportunity to speak, and I look forward to your questions.

Chairman HOUGHTON. Mr. Bartsch, thank you.

Mr. Lincoln, it is great to see you. Thanks very much for coming.

STATEMENT OF JOHN W. LINCOLN, PRESIDENT, NEW YORK FARM BUREAU, INC., AND MEMBER, BOARD OF DIRECTORS, AMERICAN FARM BUREAU FEDERATION

Mr. LINCOLN. Very nice to see you. Good afternoon. My name is John Lincoln. I am a dairy farmer from Bloomfield, New York, where I own and operate Linholm Farm. I serve as the elected president of the New York Farm Bureau, and I am a member of the board of directors of the American Farm Bureau.

Our farm, Linholm Farm, is a family farm. It is operated by myself and my wife, our daughter, and son-in-law, and son. So many of the issues that I will speak to you about will have a great impact upon whether that farming operation is able to be transferred to the next generation.

Like most farmers in New York, I have a special interest in land conservation because of the amount of farmland lost each year in my State. Because my farm is located near Rochester, I know firsthand how development and urban sprawl can turn farms and open space into housing projects and shopping centers.

The Farm Bureau commends you, Chairman Houghton and the Subcommittee Members, for calling attention to the impact of tax law on land use. I am pleased to be here today to make this statement on behalf of the American Farm Bureau.

The estate taxes are at the top of Farm Bureau's list of tax policies that cause changes in land use. The estate tax rates of 37 to 55 percent can force the sale of farmland, because heirs must come

up with cash to pay the onerous tax. What farm businesses have is land, not cash. And often land has to be sold to generate the money to pay estate taxes. More often than not, the highest bidder is a developer, and not a farmer.

Over the years, attempts have been made to try and lessen the impact of estate taxes on farmers and ranchers. In 1997, the family business estate tax exemption was established. Special use valuation has been part of the Code since the mid-seventies. While these targeted provisions are helpful, they are very complex, and require huge investments in time and money for estate tax planning. This expense discourages their use, and takes money needed by farmers and ranchers to run their businesses.

The Farm Bureau believes that estate taxes should be eliminated. Other efforts to reduce estate taxes should be viewed as incremental reform, and be designed to lead to the eventual elimination of estate taxes.

The capital gains tax is another tax that has a tremendous impact upon the conservation of farm and ranch land. Many agricultural producers near or in retirement want to sell their land to younger farmers and ranchers, including family members; but capital gains taxes encourage farmers and ranchers to hold property until death, triggering the sale of land to pay estate taxes.

When farmland is sold, capital gains taxes also encourage a land use change. The selling price of land is typically set to recover capital gains taxes from the buyers. Developers, not farmers, can more easily afford the higher price. The transfer of land out of agriculture will accelerate if the stepped-up method of valuating property is replaced with the carryover method, because the change will cause a huge capital gains tax increase on farmland.

The Farm Bureau supports the elimination of capital gains taxes, and supports the retention of the stepped-up method for valuing property at death. Until the tax is eliminated, the capital gains tax rate should be lowered to no more than 15 percent.

There are many proposals to provide tax incentives; either tax reductions, or credits. To farmers and ranchers who act to conserve their land, the effectiveness of tax incentives is limited, however, because they only have value if the farmer or rancher is making money and paying taxes. This leads me to my final point. The best way to conserve farm and ranch land is to keep farming and ranching profitable, and keep agricultural producers on their land.

Congress is considering several tax proposals that would help farmers and ranchers manage risks caused by uncontrollable weather and markets. Enactment of the risk management tools, like farm and ranch risk management accounts, is a priority for the Farm Bureau.

Again, thank you for the opportunity to speak today. And I would be glad to answer questions.

[The prepared statement follows:]

Statement of John W. Lincoln, President, New York Farm Bureau, Inc., and Member, Board of Directors, American Farm Bureau Federation

My name is John Lincoln. I am a dairy farmer from Bloomfield, New York, where I own and operate Linholm Farm with my wife Anne, daughter Julie and son-in-law Michael. I serve as the elected President of the New York Farm Bureau and I am a member of the Board of Directors of the American Farm Bureau Federation.

Like most New York farmers, I have a special interest in land conservation. My farm is located in Ontario County near Rochester. I serve on the Farmland Protection Board of Ontario County and know first hand how development and urban sprawl can turn farms and open space into housing projects and shopping centers. Thank you for the chance to present the views of Farm Bureau on the impact of tax law on land conservation.

The American Farm Bureau Federation's interest in tax policy and its impact on land conservation is keen. Production of food and fiber by farmers and ranchers requires the use of large amounts of land. Roughly 43 percent of the land in this country is farm and ranch land. When the lands owned by federal and state governments are subtracted, farm and ranch land accounts for almost 70 percent of the privately owned land.

While tax policy is usually made with the intent of doing good, often little thought is given to the "unintended consequences" of tax policy on land use. Our comments will address both intended and unintended consequences of the current tax system.

FEDERAL ESTATE TAXES

At the top of the list of concerns of farmers and ranchers about unintended consequences on land conservation from the current tax system is the federal estate and gift tax. Farms and ranches are ongoing businesses. Many of these businesses are multi-generation family businesses. The death of one member of the family can directly impact the ability of remaining members of the business to carry on operations after paying estate taxes. Land that would normally remain in the family and be devoted to agricultural production is then available to be put to other uses. Thus, the current federal estate tax law has, at times, the unintended consequence of forcing family-owned farms out of business and shifting agriculture land to other uses.

Owners of these multi-generation farms and ranches often seek legal advice for estate planning to structure their assets and operations to minimize the estate tax consequences of the death of a member of the family. These actions are costly and may reduce the economic efficiency of day-to-day operations. Land is not easily gifted in small blocks to avoid the gift tax on yearly transfers, therefore, limiting the usefulness of gifting as an estate planning tool.

Farm Bureau policy has long called for the elimination of estate and gift taxes. This would be the simplest, cleanest approach to cancel the impact of estate taxes on land use. If elimination of the estate and gift tax is not politically feasible, there are ways to lessen the unintended consequence of forcing farmland to be sold and possibly shifting to a different use.

The current per person exemption for assets in an estate is \$650,000. Current law will increase the per person exemption to \$1 million by 2006. Farm Bureau policy calls for increasing that exemption to \$5 million per person. Exact figures are not available, but it is a reasonable estimate that as high as 99 percent of the farmers and ranchers would be exempt from estate taxes if the per person exemption was increased to \$5 million and then indexed for future changes in the overall price level. These farms could then be kept in the family and continued as ongoing businesses.

The changes in estate taxes in 1997 created a family-owned business exemption of \$1.3 million. This is helpful, but we continue to be concerned about how this section is administered so that as many families as possible qualify for the exemption. In addition, this section of the law is very complex and its use necessitates extensive and expensive estate tax planning. Farmers and ranchers worry that even with careful planning, their estate may be fail to meet all the eligibility criteria at their death making a bad situation even worse. Increasing the regular per person exemption would remove some of these uncertainties.

Another way to lessen the potential for the estate tax to force a change in land use is through special-use assessment under section 2032A. This provision allows for land to be valued for estate tax purposes at its agricultural value rather than its market value. Current law limits the special use evaluation to a reduction in value of \$750,000 (indexed for inflation). Removing the limit, or at least increasing the minimum, would reduce the potential for land to change uses to meet the cost of estate taxes, especially near large urban areas and around protected areas such as national parks.

The yearly gift allowance should be increased to \$50,000 per year so that land could be transferred before the death of the owner. Farm property that is restricted by a voluntary conservation easement, while actively farmed by the heirs, should be exempt from estate taxes.

The best way to lessen the impact on estate taxes on land use would be to repeal the estate and gift tax. The second best would be to increase the personal exemption

to the point that most farms and ranches would not be adversely impacted by the estate tax. The third best solution is to expand the number of ways that estate taxes can be reduced or delayed.

ESTABLISHMENT OF BASIS

The tax package that was passed by the House and Senate this summer and recently vetoed by President Clinton had important estate tax changes supported by Farm Bureau. The estate tax would have been repealed in 2009 and replaced by a capital gains tax when property is sold. Of great concern to farmers and ranchers was the loss of stepped-up basis for capital gains tax purposes. Under current law, the basis for capital gains tax purposes is stepped-up for the heirs to the value of the assets at the time of death of the decedent. The heirs only pay capital gains taxes on the increase in value of assets during the time they own the assets. The recently vetoed legislation would have made the original basis of the decedent the basis for the heirs. This would have significantly increased capital gains taxes for heirs who sell assets.

If the assets of a multi-generation farm are not sold, basis is not an issue. But in many cases the loss of stepped-up basis will impact whether or not land stays in farming or is moved into other uses. Often one sibling in a family remains in farming and/or ranching while other siblings pursue off-farm employment. The farm or ranch is often the principal or only asset of the older generation. At death, the farm or ranch is divided among the siblings. The sibling that has remained in farming or ranching has to buy, lease or rent the portions owned by the other siblings. If the other siblings wish to sell and use the money for other purposes, they will face substantial capital gains taxes based on the original basis for the property. This makes it more difficult for the actively farming sibling to buy the land. If the basis was stepped-up, the taxes would be less and the sibling wishing to buy would be in a better position to purchase the land and keep it in farming or ranching.

In many situations, none of the heirs wish to continue farming or ranching and all wish to sell. A capital gains tax based on the carry over method increases the cost of buying land for younger farmers just getting started and those wanting to expand their farming or ranching businesses. When new or neighboring farmers and ranchers can't afford to buy farmland, selling the land for alternative uses becomes the only option.

CAPITAL GAINS TAX

The capital gains tax is another tax that has unintended consequences for land use and is closely tied to estate and gift taxes. The capital gains tax is a tax on asset transfers from one form to another, such as from farmland to certificates of deposits in a bank. The tax can be avoided by simply not making the asset transfer.

Many farmers and ranchers nearing retirement or in retirement are interested in selling land to younger farmers and ranchers, including family members involved in the farm or ranch operations. The current 20 percent capital gains transfer tax is a large impediment to taking such action. Rather than making an orderly transition of land ownership from one generation to the next, the land is often held by the older generation until death and then caught in the estate tax web discussed earlier.

Part of the problem with the capital gains tax is that it is a tax on the total dollar gain in value, including the portion of the gain that simply reflects the change in the overall price level for the economy as a whole. For example, farmland is often held for 30 years or more. The overall price level is roughly four times what it was 30 years ago. Land valued at \$500 per acre in 1969 would have to sell for \$2,000 per acre in 1999 for it to have the same purchasing power as the \$500 had in 1969. Any increase beyond the \$2,000 would be the "real" gain in the value of the land. Capital gains taxes are paid on the entire increase in the value of the land, not just on the real gain. Once again, this law leads to economic inefficiencies and unintended consequences of forcing land use changes.

As with the estate and gift tax, the best policy reform approach would be to eliminate the capital gains tax. If that cannot be done, the gain should be indexed for the change in the overall price level and the real gain taxed at a lower rate of 15 percent. Another option would be to allow retiring farmers and ranchers to sell land and put the money into an IRA-type account and pay taxes when the money is withdrawn from the account. Another option to provide capital gains tax relief would be to make current exclusion of the first \$500,000 of gain on the sale of a principle residences to apply to sale of a farm.

All of these approaches would allow for an orderly transition of land from one farmer to another and increase the potential for land to remain in production agriculture rather than be shifted to other uses.

TAX INCENTIVES FOR ENVIRONMENTAL MANDATES

Tax incentives should be provided for expenses required to meet mandated environmental policies. For farms and ranches with slim operating margins, mandated environmental expenses can turn operating profits into operating losses. If these losses continue for a few years, selling the land may be the only option for survival. Other farmers and ranchers are reluctant to assume the risk of expenses to meet the environmental mandates on the land. Thus, selling for non-production agriculture uses may be the only viable option. Providing tax incentives should help meet environmental policy goals while keeping land in agriculture, a positive intended consequence.

One drawback of tax incentives for mandated environmental actions is that they only have value if the farm or ranch is making money and paying taxes. It is important—to recognize during these difficult economic times in agriculture that tax incentives may have little to no value. They are not an adequate substitute for cost-sharing that provides direct assistance to farmers and ranchers to carry out environmental mandates.

INCENTIVES FOR VOLUNTARY CONSERVATION EASEMENTS

While harboring the same drawbacks as other tax incentives, tax deductions or credits for voluntary conservation easements is another way to meet environmental policy goals while keeping land in agricultural uses. The easement could be to a public agency or a private conservation group and should apply to both donated easements and easements that are purchased. As stated previously, the bulk of a farmer's net worth is in land. The separation of development rights from property can decrease land value tremendously. It is therefore difficult to devise a tax credit that will adequately compensate farmers and ranchers for donated easements, limiting their effectiveness.

FARM PROFITABILITY AND LAND USE

Farms and ranches that are profitable will remain in agriculture therefore preventing changes in land use. Farmers and ranchers must deal with volatile income swings that result from unpredictable weather and markets. Tax code provisions that allow the matching of expenses with income are of great help.

Enactment of Farm and Ranch Risk Management Accounts (FARRM accounts) that allow farmers and ranchers to reserve part of their income for bad financial years is a Farm Bureau priority. FARRM accounts were included in the Taxpayer Refund and Relief Act passed by Congress but vetoed by the President. Repeal of the alternative minimum tax would simplify the tax system for farmers and ranchers and allow them to more effectively manage their tax burden. Cash accounting is an important financial management tool. Recent changes to allow income averaging have been helpful.

Many other tax law changes would help farmers and ranchers stay on the land and reduce the potential for the land to shift to other uses. Two Farm Bureau priorities are allowing for the full deductibility of health insurance premiums paid by the self-employed and increasing the amount that small businesses can expense each year.

IMPLICATIONS FOR FUTURE TAX POLICY

This Subcommittee faces a major challenge in considering the impact of federal tax policy on land use. Current tax law has a major impact on land conservation because the overall tax load is large enough to cause landowners to seek legal means to reduce that tax load. Farmers and ranchers whose families have worked hard to accumulate assets in land do not want to pay confiscatory tax rates. Thus, they seek alternatives that may directly impact land conservation.

Two choices are available to deal with these problems. One option is to continue to add features to the current tax system to try to offset the negatives in the system. We have proposed some ways to do that for issues of particular concerns to farmers and ranchers.

The other option is to start working toward reform of the entire federal tax system. We have made some suggestions for that approach as well.

We applaud the subcommittee for recognizing that inactivity is not a realistic option and encourage changes that will help keep farmers and ranchers on the land and keep land in farming and ranching.

Thank you.

Chairman HOUGHTON. Thanks very much, Mr. Lincoln.
Mr. Miller.

STATEMENT OF CHRISTOPHER MILLER, PRESIDENT, PIEDMONT ENVIRONMENTAL COUNCIL, WARRENTON, VIRGINIA

Mr. MILLER. My name is Christopher Miller. I am president of the Piedmont Environmental Council, a 26-year-old land use and land conservation organization located in Warrenton, Virginia, serving an area of Virginia approximately the size of the State of New Jersey. We appreciate very much the opportunity to testify before the Oversight Subcommittee on the successes of the American Farm and Ranch Protection Act and our suggestions of how to make a good law better.

After looking hard at the questions of environmental degradation and land use, we believe that sprawl—the loss of farmland, forest land, ranches, other open space—is probably the single greatest threat to the environment. For those families that wish to remain in farming and continue ownership of open space lands, the effect of sprawl patterns of development is intense. In the short term, farmers and other open space landowners are faced with local property taxes that are increasing rapidly and combined with appreciating land values. This effect is amplified by many local governments increasing property tax rates to cover the direct costs of sprawl. Since farm income has not increased as quickly, and in many areas is declining, landowners are often faced with the prospect of selling land to pay local property tax bills. Added to the immediate pressure of increasing property taxes is Federal tax law, and in particular the enormous penalty of estate tax law.

We thank Chairman Houghton for his sponsorship and stewardship of the American Farm and Ranch Protection Act, which was enacted as part of the Taxpayer Relief Act of 1997. This vital legislation was a first step toward creating an important incentive for landowners to protect open space and the farming tradition on a voluntary basis.

The Farm and Ranch Protection Act enables America's farm and ranch families to continue what they do best: take care of America's rural lands. It lessens the Federal Government's interference in the family's decision on whether to maintain the farm, ranch, or forest. It does so without regulation, without taking the land off the local and State tax rolls, and without imposing on the American taxpayer the costs of acquisition, administration, and maintenance of the land.

The estate tax incentives are part of an entirely voluntary approach for a rural landowner to preserve the land for rural purposes. The bottom line is conservation easements are working where the benefits are most needed, among small farmers and ranchers. Since the effective date of the American Farm and Ranch Protection Act, the rate of easement donation in the Virginia Pied-

mont has nearly doubled, as measured both in terms of the number of easements recorded, and the total acres recorded, during the year 1998.

By the end of 1999, we expect over 200 applications by individual landowners to donate easements on approximately 20,000 to 30,000 acres of land. That is adding to a total that we have already protected of about 105,000 acres, all still in private ownership. Our understanding is that the experience in other States is similar, particularly in the West.

By increasing the benefits to a level where the impact is substantial, relative to the overall estate tax liability, Congress provided a tremendous hand in the efforts to combat sprawl and to protect rural lands. As such, the goal of the Congressional urban sprawl agenda should be to further expand and reform the American Farm and Ranch Protection Act.

And here are some suggestions. The current law restricts the estate tax exclusion for land placed under easement to 40 percent of the value of the estate, with a limitation of \$400,000 on the amount that can be excluded for the purposes of estate tax. The limitation would increase to \$500,000 for 2002 and beyond. In order to provide a meaningful improvement in this important provision, the objective of Congress should be 100-percent exclusion from the estate tax, with no limitation, regardless of the size of the estate.

We also support the expansion of the area. We find that the areas under pressure are approximately 50 miles driving distance from a metropolitan region. And that might do a lot to include the areas that others felt have been left out by the previous limitations.

We also believe that there should be elimination of the valuation threshold. It would serve to improve the provision and enhance both the benefit and administration of the provision. Strict tests exist in law to determine whether land qualifies for a conservation easement. The valuation test adds a level of uncertainty and inconsistency, because assessors value land differently. Protecting pristine lands, even in cases where the conservation easement does not cause a drastic drop in land values, should be encouraged, rather than disqualified.

There are some technical issues with amendments which would be addressed by amendments we have proposed to clarify the prohibition on commercial recreational use and to correct the deletion of historic land as being qualified for exclusion. We also hope that Congress will look at other tax incentives to help protect open spaces, including creation of funds for the purchase of conservation easements on private land.

I appreciate your time, and would be happy to answer any questions.

[The prepared statement follows:]

Statement of Christopher Miller, President, Piedmont Environmental Council, Warrenton, Virginia

The Piedmont Environmental Council appreciates the opportunity to testify before the Oversight Subcommittee of the House Ways and Means Committee on the success of the American Farm and Ranch Protection Act and its strengths and weaknesses. In particular, we commend the Committee for evaluating the impacts of the American Farm and Ranch Protection Act and other tax provisions on the broader

effort to slow the loss of farm, ranch and other open space lands to sprawl patterns of land development.

The Piedmont Environmental Council, a 26-year-old non-profit organization located in Warrenton, Virginia, serves an area of Virginia approximately the size of New Jersey. Our mission is to promote and protect the rural economy, natural resources, history and beauty of the Virginia Piedmont. For 27 years we have worked hard to better understand the pressures facing rural landowners and rural communities. From our experience, the most serious threat is the sprawl pattern of land development that is typified in Northern Virginia and so many other metropolitan regions in the United States.

The most serious environmental problem facing America today is the loss of farmland, forest-land, ranches, and other open space to sprawl patterns of development. By consuming land at four times the annual rate of populations growth, the costs of sprawl far outweigh the benefits of the associated economic development. Time and time again, studies by PEC and other organizations have demonstrated that the net fiscal and economic costs of providing services to rapidly growing and widely dispersed development far outweigh additional tax revenue and economic activity.

The most obvious costs of sprawl are the dramatically higher expenditures for transportation, new schools, and other infrastructure investments. The current estimate in Virginia of additional tax revenue required for the next generation of interstates, highway expansions and bypasses of new urban areas is \$70 billion over 20 years. This is in addition to the increased levels of transportation funding authorized last year by TEA-21. The story in the case of school construction is even more daunting; not only must we find the revenue for new school construction in areas of sprawl development but we must also replace the revenue lost from declining urban and inner-suburban neighborhoods necessary to maintain and remodel the existing schools. [One estimate of the immediate needs in Virginia was \$26 billion.]

An indirect cost to the Federal government is the cost of controlling air and water quality. The failure to meet air and water quality standards has forced state and federal government officials to pursue increasingly onerous regulatory programs, at considerable expense to the taxpayer and American businesses.

In places like Northern Virginia, the improvements in emissions controls on cars has been off-set by the steady increase in the number of vehicles and vehicle miles traveled. As our communities become more widely dispersed, we rely on cars for more often and we drive them further each trip. As a result, air quality is deteriorating, not improving, relative to the levels in 1991 when the latest amendments to the Clean Air Act were enacted. During the past summer, Northern Virginia experienced nearly 40 violations of the .08 ppm 8 hour average for ozone, meaning that the public was exposed to dangerous levels of air pollution nearly one out of every three days.

In the case of water quality, sprawl patterns of land development is responsible for a large portion of the sedimentation that is identified nationally as the single largest threat. The water quality reports for streams across the United States, required by section 303(d) of the Clean Water Act, consistently identify sedimentation as the greatest threat. Land development disturbs huge areas, and combined with loss of forest cover, results in an increase in the total sediments eroding into the nation's streams.

Less tangible, perhaps, is the impact of sprawl on the American family and its values. Many of the social ills facing our communities, such as road rage, increased juvenile delinquency, and persistent unemployment in urban and inner suburban communities, can be attributed in part to the effects of sprawl patterns of land development. Road rage is directly related to the traffic congestion that results from more people driving greater distances. Juvenile delinquency is, at least in part, due to the fact that parents are commuting nearly three hours per day, meaning children and teenagers are frequently unsupervised in the afternoon and evening. And finally, the unemployed and under-employed are unable to afford the transportation costs to reach increasingly dispersed jobs on the outer edges of expanding metropolitan regions.

The phenomenon of sprawl is an increasingly common one. All across the country, farms, ranches, forests and wetlands are forced to give way to the pressures for new office buildings, shopping malls and housing developments. America is losing over four square miles of land to development every day. Much of America's historically and environmentally significant land is under development pressure. This is often out of proportion to the expected demands of population growth, as sprawl leapfrogs development far beyond metro centers.

For those families that wish to remain in farming and continue ownership of open space lands, the effect of sprawl patterns of development is intense. In the short term, farmers and other open space landowners are faced with the local property

tax impacts of rapidly appreciating land values. This effect is amplified by many local governments increasing property tax rates to cover the direct costs of sprawl. Since farm income has not increased as quickly and in many areas is declining, landowners are often faced with the prospect of selling land to pay local property tax bills.

Added to the immediate pressure of increasing property taxes is Federal tax law, in particular the enormous penalty of estate tax law. Specifically, the value of land in those parts of the country where ranches, farms and forests traditionally have flourished has skyrocketed to the point where landowners' children can no longer afford the estate tax bill after their parents die. The result is predictable. Family land holdings are split up and sold. The problem of course is that their land is often some of the best and most productive agricultural land in the nation.

The trend is alarming: since 1950, Pennsylvania has lost more than 4 million acres of farmland; an area larger than Connecticut and Rhode Island combined. Metropolitan Phoenix now covers an area the size of Delaware. It is estimated that over the next 45 years, sprawl in the Central Valley of California will affect more than 3.6 million acres of America's most productive farmland. Added to this is the fact that, in some areas of the country, more than 60% of the land will experience inter-generational transfer in the next ten years. And this is only the tip of the iceberg.

In Washington's own "back yard," the Piedmont region of Virginia, like many urbanizing areas across America, is characterized by dramatically inflating real estate values. Farmland which once sold for \$500 an acre in the 1960's now sells for \$10,000 to \$15,000 an acre. In central Loudoun County, the second fastest growing county in America, land that in the 1960s and 1970s was exclusively in farming, now has speculative development values of more than \$50,000 an acre. This spillover effect is manifested in many counties by intense pressure for development which sprawls across open country at low densities, wasting land and further increasing the pressure for farm conversion.

Recognizing this development pressure, and the threat to America's farmers, ranchers and open space, the Piedmont Environmental Council has worked with Congress to develop solutions which combine the best aspects of public and private involvement. Working with Chairman Houghton, Senator Chafee and countless other Members of Congress and citizen groups, this effort culminated in the enactment of the American Farm and Ranch Protection Act in 1997, which created a conservation easement incentive under Internal Revenue Code section 2031(c).

We thank Chairman Houghton for his sponsorship and stewardship of the "American Farm and Ranch Protection Act" to enactment as part of the "Taxpayer Relief Act of 1997." This vital legislation was a first step toward creating an important incentive for landowners to protect America's open space and farming tradition on a voluntary basis by placing their lands under easement in exchange for relief from the estate tax, which often threatens our farmers and ranchers.

The American Farm and Ranch Protection Act enables America's farm and ranch families to continue to do what they do best: take care of America's rural lands. It lessens the Federal government's interference in a family's decision of whether to maintain the farm, ranch, or forest. In other words, the American Farm and Ranch Protection Act protects farm, ranch and forest land and the families who own it. It does so without regulation, without taking the land off the local and state tax rolls, and without imposing on the American taxpayer the costs of acquisition, administration, and maintenance of the land. This important new law also provides an entirely voluntary approach for a rural landowner to preserve the land for rural purposes. This, in turn, contributes greatly to the larger public good of conserving America's increasingly threatened rural lands.

The impact of the American Farm and Ranch Protection Act on the rate of voluntary land conservation is difficult to isolate, since it is one of several tax benefits that result from donating a conservation easement. The addition of this new incentive, however, has clearly spurred increased interest in voluntary land conservation. Since the effective date of the American Farm and Ranch Protection Act, the rate of easement donation in the Virginia Piedmont has nearly doubled, as measured in numbers of easements recorded and total acres recorded in 1998. We expect that the rates for 1999 will be the same or greater. One interim measure in Virginia is the number of easement applications under consideration by the Virginia Outdoors Foundation, which estimates that over 175 applications have been received in 1999.

Most importantly, it is greatly benefitting the family farmer, enabling smaller farms to protect almost the entire operation from the estate tax. As the son of one farmer in Orange County put it during a discussion as to whether to take advantage of easement donation, "If you don't do it, Dad, I won't have a chance of staying in farming. I will have to sell the farm to pay the estate taxes."

In other farming and ranching communities across the country, including Wyoming, Montana, and Pennsylvania, the story is similar. The Jackson Hole Land Trust reports that “The Jackson Hole Land Trust has experienced a significant increase in the number of easements that have been closed since the passage of the American Farm and Ranch Protection Act. The American Farm and Ranch Protection Act is a significant contributor to the increase. It’s definitely been something that keeps people at the table and it has definitely given prospective easement donors a reason to follow through—it really works for people. Particularly in concert with other estate planning techniques.” The Montana Land Reliance has relied on the additional incentives resulting from the American Farm and Ranch Protection Act to generate thousands of acres in easements in 1998. The Lancaster Farmland Trust and the Brandywine Conservancy also believe that section 2031(c) has increased both the interest in easement donation and the rate of donations.

The bottom line is conservation easements are working where the benefits are most needed—among small farmers and ranchers. By increasing the benefits to a level where the impact is substantial to overall estate tax liabilities, Congress could lend a tremendous hand to efforts to combat sprawl and protect our farms and open space. As such, the goal of the congressional urban sprawl agenda should be to further expand and reform the American Farm and Ranch Protection Act.

Due to revenue constraints during the original debate, the conservation easement provision was scaled-back (i.e., 40 percent exclusion from the estate tax up to \$400,000 with a ramped-up limitation of \$500,000 by 2002 and thereafter) and a cumbersome threshold test was established (i.e., value threshold test for determining “threatened land”). The ultimate provision provided desperately needed immediate conservation incentives and has served as a “foot-in-the-door” for future expansion and reform efforts while the “pilot” program was evaluated. The overwhelming success of 2031(c) in providing relief to farmers and ranchers, coupled with the ever-growing problem of urban sprawl, presents Congress with a rare opportunity to build on a program that works.

EXPANSION OF THE AMERICAN FARM AND RANCH PROTECTION ACT

Current law restricts the estate tax exclusion for land placed under easement to 40 percent of the value of the estate with a limitation of \$400,000 on the amount that can be excluded for purposes of the estate tax. The limitation would increase to \$500,000 for 2002 and beyond. In order to provide the most meaningful improvement in this important provision, the primary objective of Congress should be a 100 percent exclusion from the estate tax with no limitation regardless of the size of an estate. Not only would this simplify the current system, it would serve to provide an additional incentive to landowners to create conservation easements on a voluntary basis. The rancher in Colorado who owns 2000 acres of land hardly finds relief in a \$400,000 provision. It is unfortunate that the law compels him to sell the land, almost always to developers, to pay the estate tax because farming does not produce the revenues to either pay the estate tax or remain viable if debt is incurred to cover the estate tax liability.

The provision adopted in 1997 limits eligible lands to those within 25 miles of a metropolitan area (as defined by the Office of Management and Budget), national park or wilderness area or within 10 miles of an urban forest (as designated by the Forest Service). While these areas represent the most threatened lands, urban sprawl is proceeding at such a rapid pace that protection of open space should not have to wait until sprawl is knocking on the door (literally). The recently passed Financial Freedom Act of 1999 would have doubled the geographic area covered by section 2031(c) to 50 miles and 20 miles respectively. We are very supportive of that effort and encourage Congress to consider allowing all lands subject to developmental pressure to qualify for conservation easement tax incentives. The land we can save today will most certainly be threatened tomorrow. Acting proactively to protect our farmers, ranchers and open space is the best way to avoid the decay of our countryside.

Eliminating the valuation threshold would also serve to improve the provision and enhance both the benefit and administration of the provision. Strict tests exist in law to determine whether land qualifies for a conservation easement. The valuation test adds a level of uncertainty and inconsistency (different assessors value differently). Protecting pristine lands, even in cases where the conservation easement does not cause a drastic drop in land values, should be encouraged rather than disqualified or nullified.

REFORM OF THE AMERICAN FARM AND RANCH PROTECTION ACT

Since adoption of the American Farm and Ranch Protection Act, various technical issues have arisen which, if enacted, would further encourage farmers and ranchers to utilize conservation easements as envisioned by the legislation. Last year, Congress began the process of reform by providing important clarification to the post mortem election and working to advance certain technical amendments to IRC section 2031(c) which are widely viewed as improvements to the American Farm and Ranch Protection Act. These amendments include: (1) clarify the prohibition on commercial recreational use and correct the deletion of historic land as being qualified for the exclusion; and (2) ensure a fair procedure for any determination by the Secretary of the Treasury that land within 25 miles of a national park or wilderness area is not eligible because it is not under significant development pressure. It is our hope that Congress include these provisions in the soonest available tax vehicle.

THE NEED FOR OTHER INCENTIVES

The estate tax incentives of the American Farm and Ranch Protection Act do not meet all the challenges facing rural landowners. Further, the combination of income tax and estate tax benefits are of little incentive to the rural family that is generating only marginal income from open space uses. We would encourage the Congress, and Members of the committee to support other efforts to expand and promote conservation easements as a valuable tool in our fight against urban sprawl. We are currently working with Members on other relevant committees and officials at the Departments of Interior and Agriculture to develop a funding pool for the purchase of conservation easements on America's valuable farming land. Keeping the land in the custodial care of farmers and ranchers and encouraging farms to continue farming is the best way to ensure that our rich agrarian heritage is maintained and that our children and grandchildren will enjoy the grandeur of America's vast open space.

In closing, the best caretakers of America's land are the farm and ranch families who have owned and cared for it for generations. Once these families are displaced from their land, no amount of regulation or government spending can replace their productive stewardship of the land. Chairman Houghton's strong support of the American Farm and Ranch Protection Act ensures the nation's farmers and ranchers will maintain their important role in conserving America's open space our great agrarian tradition.

Chairman HOUGHTON. Fine. Thanks, Mr. Miller.

Mr. Coyne, would you like to ask a question?

Mr. COYNE. Thank you, Mr. Chairman.

Mr. Bartsch, given the brownfields time in existence, the legislation that was passed—that is, the tax incentive portion of it—and it has only been available for a year and a half now, could you tell us just what activities have been undertaken as a result of that to date?

Mr. BARTSCH. Well, about 20 or 25 projects have actually used the incentive. I think what is important, again, is the timing. Large-scale redevelopment of brownfield sites takes a long time. And when you start to introduce a new incentive into the mix, again, there is an education process. People need to understand how it would work, and why it would work, and what benefits it would bring.

I think we have not had enough time to let that play through. There is more interest now. I think a good analogy to this is when Congress passed the rehabilitation tax credit for historic structures a number of years ago. That took a while, too, to get worked into the redevelopment process so that people could understand what would happen. But that has been very successful. And I think there

is a lot of potential for the brownfield tax incentive to grow in usefulness in the same way.

Mr. COYNE. So it takes a while to get geared up, and if there is not enough time allotted, before you know it, the program expires.

Mr. BARTSCH. The program will expire. What has happened now is more people are interested in it. But again, they are now looking at the fact that reuse projects can take a long time; there may be unforeseen delays. And they are just really worried that they are not going to get through completion before the expiration, and that will throw off their financial calculations for the project. And it just makes them a little nervous. The uncertainty makes them very concerned.

Mr. COYNE. Thank you.

Chairman HOUGHTON. Thanks very much.

Mr. Portman.

Mr. PORTMAN. Thank you, Mr. Chairman, and thanks to the panel for the good testimony. I would like to ask a few questions, if I might, about priorities and what might be the most cost-effective way to get at the same result, particularly Ms. Hocker and Mr. Dennis, with regard to land conservation and the various proposals that you talked about.

As I heard your testimony, Mr. Dennis, you talk about three kinds of incentives. First, is I guess what you might call transfer or gift encouragement; somebody giving land that is being utilized for private purposes to a conservation easement, or actually selling the land to a conservation use, State, local, Federal Government, or non-profit.

Second would be how to manage your own land without transferring it. And I think one of the interesting things about the Member testimony earlier that you may have heard was Mr. Gilchrest's comments about the Endangered Species Act and the disincentive that many landowners currently feel to protecting endangered species because they feel they will be over-regulated and burdened by having an endangered species on their land; rather than having the right incentive, which is to help protect that endangered species on the land.

And then the third one was the notion of a death tax, as you said, and how to deal with sort of break-up prevention, so that when someone dies you do not have the land being broken up. And we also talked about that in terms of the farms with Mr. Lincoln.

But my question to you is, could you prioritize those three for us? And maybe, if it is easier, prioritize the specific proposals that might be within those three in the order of which one has the maximum impact on what you are trying to achieve.

Mr. DENNIS. No matter how I answer that question, I am going to get in trouble.

Mr. PORTMAN. You are going to get in big trouble, yes.

Mr. DENNIS. Well, I will say—

Mr. PORTMAN. You can forget about H.R. 2880. I mean, I do not have a vested interest in this.

Mr. DENNIS. Well, I do not want to ingratiate myself with you, but that was—

Mr. PORTMAN. Do not bother.

Mr. DENNIS. We happen to feel that the exclusion of one-half of the capital gain is at the top of the list.

Mr. PORTMAN. Do you really think that would be the most effective?

Mr. DENNIS. We went out to all of our people in the field who are in the land business, and we gave them a menu of different types of tax incentives. And we asked them to get back to us and rank them.

Mr. PORTMAN. Yes.

Mr. DENNIS. And that was right at the top of the list. Everyone put that at the top of the list.

Mr. PORTMAN. That was ahead of estate tax?

Mr. DENNIS. That was ahead of estate tax. And the reason was a couple of things. First of all—now, remember, these are people who are entrepreneurs out trying to acquire land—it is not a very expensive provision, and in this day and age, we have to be real sensitive to the revenue cost.

Mr. PORTMAN. Right.

Mr. DENNIS. And we felt that that provision gives us a competitive edge if we are out there negotiating for land, which is real simple. It allows you to beat someone else to that piece of property. And it is incredibly important to us.

Mr. PORTMAN. The 50-percent exclusion is adequate to create that competitive advantage?

Mr. DENNIS. Well, do you want to make a better offer? [Laughter.]

Mr. PORTMAN. Remember, we are trying to keep it inexpensive.

Mr. DENNIS. We feel good about the 50 percent. And we are not greedy. We just want a competitive edge. We really do feel it would make a big difference.

Mr. PORTMAN. But the price of the land is more competitive for you to purchase at that 50 percent. It still takes an intent on behalf of the seller to want to conserve the land.

Mr. DENNIS. Well, of course, when negotiating for the land, the first thing we would do is back down from the purchase price that 50 percent.

Mr. PORTMAN. Right.

Mr. DENNIS. And then work from there.

Mr. PORTMAN. Right.

Mr. DENNIS. And that way we would probably end up splitting the savings with the seller.

Mr. PORTMAN. Yes.

Mr. DENNIS. So we would be able to get the property at a discount. You know, this has been our experience in this business. So I am not too sure if that answers that. I do want to talk about some of the other provisions.

Mr. PORTMAN. Yes, sure.

Mr. DENNIS. Just to make sure you understand it.

Mr. PORTMAN. But that is important. And just back on one thing you said in your testimony, which I think I have talked to your group about, but one of the reasons we have pursued this, as compared to the deduction, is that a lot of people cannot use the deduction.

Mr. DENNIS. Yes.

Mr. PORTMAN. I mean, you have to have income to use the deduction. So we thought this might broaden the scope of who could be potentially interested in using it.

Mr. DENNIS. That is a very important part of it, too. There are not that many provisions in the Tax Code that are targeted to conservation tax incentives. The ones that we see used most often, of course, are the ones that relate to conservation easements and deductibility.

Mr. PORTMAN. Right.

Mr. DENNIS. And that does require income to shield. You have to have income. This provision is geared more for someone who does not have the ability to make a gift—the rancher or the farmer or the average person.

Mr. PORTMAN. Right.

Mr. DENNIS. We are working in rural communities, and that is the profile of the average seller of land.

The other thing I did want to talk about is, when I say “death taxes,” when I went out West, the minute I started talking about estate taxes, they looked at me and, “What are you talking about?” And they said, “You mean death taxes.” And I do feel lifting the exclusion on estate taxes would be very important.

Mr. PORTMAN. The exemption?

Mr. DENNIS. The exemption. Because in the ranching community, for example, the average rancher that I deal with in the Malpai region has—You talk about cash poor; these are people who go out and blade roads and drive schoolbuses to make ends meet. They do have a piece of land that is worth a considerable amount of money. And if they get hit with the estate taxes, that land is gone. So I happen to think raising that cap to 4 or 5 million dollars—or maybe even beyond that—would be very important to that community.

I also want to talk just briefly about tax-exempt bonds, a proposal that has been put forward.

Mr. PORTMAN. Yes.

Mr. DENNIS. It does not go far enough. We would love to be able to issue tax-exempt bonds to be used for conservation in general. Conservation is not just timber. I know that now I am reaching. That is very expensive. We understand that there is a revenue impact there.

Mr. PORTMAN. Yes.

Mr. DENNIS. But that is another provision we feel very strongly about.

Mr. PORTMAN. It has a much larger expense, interestingly, than the tax proposals we are talking about.

Mr. DENNIS. I am sorry?

Mr. PORTMAN. The cost to the Federal Treasury is much higher over the 5-year period, at least for the proposal, the Better America Bonds, that we have been talking about.

Mr. DENNIS. Yes. We have not run the numbers on that. I think other people have. But it would be considerably more expensive than the capital gains provision, for example.

Mr. PORTMAN. Well, thank you. Ms. Hocker, I am sorry, my time has expired, but thank you for the good work you are doing out there with all those land trusts.

Chairman HOUGHTON. Thank you.

Mr. Hulshof.

Mr. HULSHOF. Thank you, Mr. Chairman.

Mr. Lincoln, welcome. Welcome to all of you, but Mr. Lincoln especially. I want to talk just a little bit, and I want to respond really to a good point that you make on page 3 regarding our discussion on, in fact, the \$792 billion tax cut that was vetoed last week which included the death tax repeal.

Just for informational purposes, you make an excellent point about the step-up in basis. And I had a lot of folks who talked to me at home about that over the August break. In fact, my family was just in exactly the same scenario as you put out in your written testimony; that is, my mother's mother passed away, my grandmother, and then passed along a piece of property. And of course, even though we are actively engaged in farming, we did not want to take that small piece of land. And so the sale or the rent of it—It is exactly as you said.

I will just tell you that as the tradeoff, what we came up with was allowing that land to be subject to only capital gains tax rates, as opposed to the 37 to 55 percent on the estate tax. And that was sort of the tradeoff. Were this an ideal world, and were you and I kings for a day, we could get rid of not only the death tax, but the capital gains tax as well. But your point was well taken in your testimony.

Mr. Dennis, what I would say to you is that, as Benjamin Franklin once said, the only two sure things in life are death and taxes. I do not think he meant them in that order, or that the Federal Government would combine those two traumatic events through the death tax; but we are working on it.

What I do want to spend some time with—And Mr. Miller, I think probably I am going to pick on you a little bit. I do not know if you were here during the questions of the previous panel that I had regarding the Treasury Department's idea of Better America Bonds, and they wanted to mirror the QZABs. And I just do not see the proof in the pudding yet, as far as how those have been successful.

Do you think—let me just ask your comment—do you think that the idea of Better America Bonds meets the objective of promoting smart growth?

Mr. MILLER. I think that it could be vastly improved, if that is the goal. If the goal is to stimulate brownfields redevelopment, that is OK, that is good, but that is not necessarily smart growth. One of the problems is that brownfields are not necessarily located in the smartest locations, and so you may be stimulating redevelopment of property that should not be developed if your concern is sprawl or your concern is the pattern of land use.

Similarly, land conservation is not always a smart growth technique. I mean, in general, it is, but there is a difference between environmental quality improvements, park land creation, and smart growth. It requires a careful analysis of regional and local land use patterns, all the other things. And so targeting and having criteria that really provide targeting are a critically important element.

Mr. HULSHOF. Well, let me ask you, because you work at the local and you mentioned the regional level. Then what would you give us as guidance as the appropriate level of Federal involvement?

Mr. MILLER. Well, I think the Federal involvement, the incentives are good. I mean, it would be nice to have the Federal Government providing additional incentives to smart growth. So a more targeted Better America Bonds program could work, potentially.

I think that the other thing that the Federal Government should look at is existing tax programs, to be sure that they are not encouraging the sprawl that they are then trying to correct. One of the things we have run into—and we are in an exurban area, just at the end—is the use of industrial development bond authority and sewage treatment plant bond authority to encourage sprawl. And those are something that I think needs to be reevaluated. Are we giving tax breaks for the right uses? That is one area.

Another area is to look carefully—and this is not necessarily tax policy—where we put our infrastructure dollars. And I will just give you a quick example. In Virginia, the proposals for highway construction that would provide the infrastructure for sprawl are estimated at \$70 billion in additional tax revenues over the next 20 years by the State. That is on top of the additional revenues provided by T-21 in the last Congress. So if we do not look carefully at those issues, something like the Better America Bonds is trying to offset a whole series of Federal policies that create more of a problem.

Mr. HULSHOF. As a last comment, maybe if you want to follow up—or any of you—our State legislature in Missouri recently enacted a bill that, especially as we see the development taking over—and Mr. Lincoln, as you mentioned, urban sprawl is getting closer to you—our State legislature made it appropriate for farms to be valued at the agricultural value for property tax purposes. And that was challenged. Our supreme court recently ruled in favor of the agriculturalists; and that is that it should be the lower property tax value.

I do not know if that is something that should be done on an individual State legislature basis, or if it is something we can do. But I really do appreciate all of you and your input today. Thank you, Mr. Chairman.

Chairman HOUGHTON. Thank you very much, Mr. Hulshof.

Mr. Weller.

Mr. WELLER. Thank you, Mr. Chairman. And the question I would like to put out there—and I think I will address it to Mr. Dennis with The Nature Conservancy; it is a group I have worked with on some initiatives back in Illinois—and particularly in the south suburbs in the State of Illinois, open space and farmland preservation particularly have been priorities over the last several years. We enacted the Illinois Land Conservation Act, redeveloping the Joliet Arsenal, setting aside 19,000 acres for the national tall grass prairie. And that doubled the amount of open space in Will County. Will County also passed a \$50-million referendum for open space land acquisition this past fall, and Governor Ryan succeeded

in convincing the State legislature to approve a \$160-million bonding program for open space.

The question I would like to ask of you—and if others on the panel would share your opinions—is, there is always a debate of how best to use those dollars. Do we purchase development rights, leave it in the hands of the local farmer to continue farming it but you purchase development rights so that they cannot subdivide it or develop it for commercial purposes? Or do you purchase the land outright? Taking it off the tax rolls, of course, is of great concern to the local school district in many cases, because of property taxes role when it comes to funding our local public schools.

From your perspective, what is the best use of those resources? You have a limited amount of money, limited budget, limited number of tools available. What is the best approach to get the most efficient use of those resources to preserve open space and prime farmland?

Mr. DENNIS. That is a very good question. We at the Conservancy, any time we answer a question like that we go back to what our mission is. And our mission is preserving important habitats for fish and wildlife, and that is the starting point.

The next thing we would do is we would look at that particular habitat or system and try to determine what are the threats, what are the stresses, to that particular habitat? And then we will develop strategies that respond to those stresses. And those strategies, if you are tying them to the stresses, if you are dealing with farmland, it may be that a no-development restriction may be the very best thing you could do with that property, and that is what you do.

If you are dealing with a piece of property that has got the last known rookery on it or something, and it is a very fragile area, you may want to buy the property outright because that is the best way to control it.

So what we would do is, we go through that analysis whenever we are talking about spending money—whether it is our money or an agency's money. What are you trying to protect? What are the stresses to what you are trying to protect? And then, what strategies do you develop? And that is what is going to drive whether you buy it outright, you lease it, you work on a management plan, or you negotiate for an easement on the property.

Mr. WELLER. Mr. Lincoln, what is the perspective of the Farm Bureau on that question?

Mr. LINCOLN. Well, I think when you consider the limited resources—We use purchase of development rights in New York, and I think Suffolk County on Long Island was probably one of the initial uses. And I would say it has been very effective there. And in other parts of New York, too, conservation easements are used, south of Rochester.

But I think as my testimony—When you look at the overall impact and what causes farms to go out, estate taxes rank very high on that list. And that is why the American Farm Bureau—which, as you know, the Farm Bureau is a grassroots organization, and through our county development, State development, policy development, and at the national level, estate taxes and capital gains, and the fact of when you have multi-family members who may

have to sell part of that estate either to the other family members so the capital gains comes into play.

But I think overall the best way to keep farms in business is to have them profitable. And that is why my final comment on the farm accounts to me makes a lot of sense, being able to set aside up to 20 percent of your income during a good year—which, as a dairyman, most dairymen had a great year last year. You know, next year may not be.

Mr. WELLER. Sure. You know, Mr. Lincoln, of course, Kenny Hulshof, who just stepped away, has been leading the fight for those farm accounts. Unfortunately, the President vetoed those farm accounts when he vetoed our effort to lower taxes and simplify the Tax Code this past week.

You know, your point about some of the initiatives, you know, one of my biggest disappointments—the Conservation Reserve Program. We talked about wildlife habitat and taking fragile farmland out of production that perhaps should not be in production. And this Congress authorized over 36-million acres for the Conservation Reserve, but they have only enrolled about 31 million. So that means there are 5-million acres of unused CRP that could be used to take fragile farmland out of production, create more wildlife habitat and, of course, preserve highly erosive farmland. And of course, when corn and soybean prices in Illinois are one-fourth lower than they should be, farmers are hurting. And of course, a lot of them are saying, “Why do we not have this land taken out of production?” And that is an important question, and we are still waiting for an answer from the Administration. Thank you, Mr. Chairman.

Chairman HOUGHTON. Thank you very much.

Mr. BARTSCH. May I add a quick comment on that, please?

Chairman HOUGHTON. Yes, go ahead.

Mr. BARTSCH. I think your question really shows how a lot of these incentives are really linked. Because the extent to which we bring back thousands of acres of brownfields using the expensing incentive or whatever, well, that really gives choices and options, and that may relieve some pressures on farmland that is subject to being used for new development.

Chairman HOUGHTON. Thank you. Thanks very much. We are sort of in a push for time, so I really appreciate your being part of this thing, and we will consider your testimony in all our deliberations. So I thank you very much.

And I would like to ask the next panel to come up, if I could. This would be Hon. Rob McKenna, the Council Member of the King County Council in Seattle; Tom Spellmire, who is with the National Association of Conservation Districts in Ohio; John S. Gates, president of Center Point Properties in Illinois, on behalf of The Real Estate Roundtable (formerly National Realty Committee) and Thomas Tuchmann, principal and vice president of Resource Management, U.S. Forest Capital, in Portland, Oregon.

Now, gentlemen, let me just make a quick statement here. You know, you have come a long way, and I really appreciate it, but we are going to end this meeting by 4 o'clock. We have got to. And so therefore, anything you can do to sort of condense those statements

and hit the high points, so that we can get on to the questions, we would certainly appreciate it.

So I would like to call on Mr. McKenna.

**STATEMENT OF HON. ROB McKENNA, COUNCIL MEMBER,
SIXTH DISTRICT, KING COUNTY COUNCIL, SEATTLE, WASH-
INGTON**

Mr. McKENNA. Thank you very much, Mr. Chairman. And I will try to set a good example for the entire panel by paraphrasing my comments. I thank you very much and the members for holding this hearing today. And I want to extend a special "Thank You" to Congresswoman Dunn, who is one of my constituents, and with whom I have worked closely on a number of issues of importance to King County, including H.R. 1863, the Community Forestry and Agriculture Conservation Act, which I am here to testify in support of today.

H.R. 1863 is a powerful combination of tax-exempt financing, private capital, timber and agricultural harvesting using best management practices, in order to save working forests and farmland, while protecting private property rights, providing liquidity to landowners, and while respecting critical environmental values such as habitat conservation and water quality.

H.R. 1863 would achieve those goals through the use of tax-exempt revenue bonds issued by a private non-profit which would be repaid with revenues from the low-impact harvest of timber or agricultural products.

H.R. 1863 is of great interest and importance to King County and to many parts of this country. King County is 2,200 square miles in size, with a population of 1.7 million. The eastern third of the county is covered with rural working forest lands. But King County is also a crossroads of traditional manufacturing, such as Boeing and PACCAR, alongside software, biotechnology, and other high-tech companies such as Microsoft and Immunex.

We have an abundance of natural resources that my constituents value very highly, just as they value the great economy and the job opportunities they have. But the two values of natural resources and economic growth have come into conflict to some extent. Over the last 25 years, 107,000 acres of forest land have been converted to development in the Seattle area in King County.

We have taken a lot of steps locally to deal with that. We have spent over \$200 million locally to acquire forest lands, habitats, and other sensitive areas. And we continue to spend millions of dollars a year for acquisition. But every year it becomes tougher, the challenge becomes greater.

We are facing tremendous pressures to convert working corporate forest lands to non-forest uses such as rural forest residences. These are the 5- and 10- and 20-acre mini-estates that are increasingly in demand by the folks who are cashing in all those stock options.

Second, we are trying to enhance water quality standards to comply with the Endangered Species Act listing of the Chinook and other anadromous fish.

Third, the policy climate for forest protection in the Northwest is somewhat of a zero-sum mentality. And there is more conflict than there is cooperation frequently.

And fourth, all levels of government and the philanthropic community can never come up with enough cash to buy all the land outright with government dollars and with charitable dollars. And so we have been looking for another tool that would allow us to preserve working forests, and also to preserve environmental values.

And 1863 helps us do that. It is a simple concept. We would create a new ownership category, a non-profit which is private, which would provide an alternative to outright preservation, intensive timber production, and development. This private non-profit would be required to exceed relevant environmental statutes and have a board makeup consisting of environmental representatives, large commercial landowners, and local government officials. They would work together, and would leverage scarce taxpayer dollars with this tax-exempt financing to generate hundreds of millions of dollars nationwide in investment capital, private capital, that could be used to acquire working forests and to keep those forests in production.

We have been working in King County for the last 2 years testing this concept. We actually went out and put together three case studies using actual large tracts of land in cooperation with the commercial property owners. And what we found when we applied the tax-exempt and commercial lending rates to these three different parcels is that we can generate the cash flow to pay off both the principal and the interest on the bonds with the tax-exempt rates, even while only applying fairly light forest harvests.

On the other hand, at taxable rates, you have to harvest at commercial rates of harvest in order to be able to repay the debt. So you end up with clear cuts and other fairly intensive commercial harvest practices.

We have a special opportunity, I think, now as a country, and certainly in the Pacific Northwest, to keep forests in production, while also harvesting it in a sensitive way that protects the environment, harvesting it more lightly, but protecting those jobs, and ultimately protecting the open space because once the bonds are retired, we can choose not to harvest the land again.

So I appreciate very much the opportunity to come and talk to you about 1863. It is a reasonable cost of \$78 million over 5 years that could protect hundreds of thousands of acres. And at that cost I think actually it would be significantly less expensive than the Better America Bonds, which are another good idea. So again, thank you. And thank you for allowing me to speak to you as a representative of local government.

[The prepared statement follows:]

Statement of Hon. Rob McKenna, Council Member, Sixth District, King County Council, Seattle, Washington

Mr. Chairman and members of the Subcommittee, my name is Rob McKenna. I represent the Sixth District on the Metropolitan King County Council in Washington State. Thank you for holding this hearing on the relationship between tax law and conservation. I would also like to extend a special thank you to Congresswoman Dunn with whom I have had the pleasure of working on many issues of im-

portance to King County including H.R. 1863—The Community Forestry and Agriculture Conservation Act which I testify in support of today.

King County is located in northwest Washington and includes both metropolitan Seattle and “edge cities” like Bellevue and Redmond which are home to hundreds of high tech companies such as Microsoft. At 2,200 square miles in area and with a population of 1.7 million, King County is one of the nation’s largest counties. The eastern parts of the county include many rural and mountainous forestlands. My constituents care deeply about those forests. King County is a crossroads of traditional manufacturing industries such as Boeing and PACCAR alongside software, biotechnology and other high-tech companies. This powerful combination has resulted in explosive economic growth that has produced a high standard of living. King County also features an abundance of natural resources that provide a quality of life that continues to attract new residents. From Puget Sound in the west to the Cascade Mountains in the east, King County residents love their natural resources and environment.

But, as recognized more and more in the press, this explosive growth has not come without its challenges. In the Seattle area, forestland has been reduced by approximately 107,000 acres in the last 25 years. As the County continues to grow, the King County Council has worked to develop new tools that will continue to provide jobs for our constituents while managing growth in such a way that our quality-of-life is maintained. These tools have included a nationally recognized forestland, habitat and open space conservation program that has invested over \$200 million in land acquisitions over the past three decades. These programs, coupled with philanthropic and state and federal technical and financial assistance, have helped us achieve some real gains in open space protection.

Yet, so much more needs to be done, especially given the increased rate of growth in forested areas. The tougher challenges we face in the years ahead are driven by four primary factors.

First, there are increasing pressures to convert working corporate forestlands to non-forest uses. These corporate forestlands sit between the Mount Baker-Snoqualmie National Forest to the East and the City of Seattle to the West. These lands have long served as an economic buffer for small rural forest -dependent communities and as an environmental buffer between the Cascade uplands and Puget Sound lowlands. However, as our population and the wealth of that population grows, we are seeing increasing development on the urban boundary and increasing fragmentation in rural areas as more and more citizens are interested in rural forest residences. We need to provide both green space and expansion in a mutually acceptable manner.

Second, King County is facing unprecedented pressures to enhance water quality standards in response to the listing of anadromous fish under the Endangered Species Act. We are working hard to do this without the divisiveness that has occurred among various parties in the past. And we have, in fact, made some progress, adopting a Sensitive Areas Ordinance to govern development standards and Best Management Practices for our roads maintenance program, among other measures. Yet again, one of the keys to our success will be assuring that non-point water sources flowing from the county, state and national forests through our cities will meet water quality standards. The working forests buffer I just spoke about, with the right management regime, provide a very attractive environmental means to achieve our endangered species goals under the listings without creating stricter regulatory mandates or impacting private property rights.

Third, the current policy climate, notwithstanding my explanation above, has been less than cooperative, especially when it comes to forestry issues. This has made it difficult to bring people together, especially when one party or another has a stake in the issue, but may not be in a decision-making role.

Fourth, all levels of government and the philanthropic community just do not have the kind of funding that is needed, given other public policy needs, to achieve the level of conservation that so many of my constituents support. I know we are not alone and that local, state and federal entities share this challenge.

So what do we do about it? Time is running out in King County. Mr. Chairman, and members of the Subcommittee, we desperately need you to support H.R. 1863—The Community Forestry and Agriculture Conservation Act because it is the only tool that will address the challenges above in a manner that is doable today.

Community forestry and agriculture bonds will allow private non-profit entities to issue tax-exempt revenue bonds for conservation purposes if the forestland they buy will have a permanent conservation easement placed on it and if the management plan they approve exceeds relevant environmental laws. While the transactions are complex and must be professionally managed, the concept is simple and responds to the challenges I outlined above in the following ways:

- For the first time an ownership category—private non-profit—provides an alternative to outright preservation, intensive timber production, and development. A private non-profit entity will have the philosophical and financial wherewithal to acquire large forested ownerships in an unfragmented state.

- The private non-profit will be required to exceed relevant environmental statutes and will have the board make-up and financial flexibility too not only meet the standards for anadromous fish protection, but exceed them if community economic objectives are met.

- For the first time, environmentalists, industry, financial and local opinion leaders will have the opportunity to make decisions together regarding a large forested ownership.

- For the first time, a conservation entity will be able to leverage scarce taxpayer dollars with private investment to generate the large sums—tens to hundreds of millions of dollars—that are needed for large scale working forest protection.

King County is so supportive of this concept that we have been working for the last two years to test its feasibility and to create a financially sound and environmentally worthy non-profit in anticipation of using this tool.

The feasibility analysis was completed by the County's Department of Natural Resources and tested both the financial and policy effectiveness of the tool. From a financial standpoint, we took actual data from corporate timberlands and applied three different forest management scenarios to those lands. Then we applied both tax-exempt and commercial lending rates to those scenarios to see if we could generate the cash flow to pay off the principal and interest on the bonds. We could, even under the lightest forest harvest. We also tested this tool with a wide range of constituents as well. While they stressed the need for accountability, they also were supportive of moving forward with forestland acquisitions.

Last year the King County Council passed a resolution in support of the Congresswoman Dunn's Community Forestry and Agriculture Conservation Act. In June my colleague Councilmember Larry Phillips and I—as private citizens—joined two prominent conservationists and the University of Washington's forestry dean to create a non-profit in anticipation of taking advantage of community forestry bonds. We are working to identify an individual with financial experience to join the board and we are keeping a seat open in case a forestland seller would like a seat on the board. This will be quite a group, with conservationists and landowners—reflecting an array of philosophical and political beliefs—joined together to manage forestlands. We eagerly wait for the time when we can move forward with a transaction.

And time is running out. In the two years we have been working on this concept, more and more forestland has been converted and those lands that have not been converted are seeing their land values skyrocket. Even with tax-exempt rates, we still need to be able to service bond debt through sustainable forest harvests and the longer we wait, the more difficult it will be for us to achieve our goals. More importantly, the more pressing the challenges outlined earlier will become and the more costly those resolutions will become.

Mr. Chairman and Members of the Subcommittee, we have had enough fighting about our forests. I urge you and your colleagues to provide us with a market-based conservation vehicle that doesn't require landowners or investors to leave money on the table to protect the environment. Please help us bring people together in support of our working forests. If not, I am afraid that we will be back in a more contentious setting that in the end will cost a lot more money and cause a lot more divisions.

Thanks you for providing me with this opportunity to testify today and I would be pleased to answer any questions you may have.

Chairman HOUGHTON. Thank you very much. You have been a great example. That is wonderful.

Mr. Spellmire—Wait, wait just a minute. Excuse me. I am sorry. I want Mr. Portman to talk about you a little bit.

Mr. PORTMAN. Sorry, Mr. Spellmire. You need a brief introduction. This is a friend and constituent of mine, Mr. Chairman, from Ohio. And he is listed here as "Thomas C. Spellmire, Legislative Committee, National Association of Conservation Districts." He has also, though, been very involved not only at the national level but

the local and State level in these issues, and was a member of the Ohio Farm Preservation Task Force, and has been a good adviser to me and other local officials on preservation of farmland in Warren County and that area. So welcome, Mr. Spellmire.

STATEMENT OF THOMAS C. SPELLMIRE, MEMBER, LEGISLATIVE COMMITTEE, NATIONAL ASSOCIATION OF CONSERVATION DISTRICTS, LEBANON, OHIO

Mr. SPELLMIRE. Thank you, Mr. Portman. Mr. Chairman, Members of the Committee, my name is Thomas Spellmire. I am a farmer by occupation, from the State of Ohio. We currently farm about 2,400 acres. It is all leased property. We used to farm 3,100 acres, but they have since built two successive "Home-arama" sites on ground that we used to lease.

I would like to cover two land use issues in my presentation here: farmland preservation and conservation practices and suggested changes to the Tax Code. Well, I am going to just start with the issue of farmland preservation. And in my opinion, three changes could be made with the IRS Tax Code that would give current and future owners of farmland more options.

The first recommendation deals with the issue of unintended consequences of the current tax law and how addressing this issue would also address retirement issues and it would also aid in the transfer of farmland from one generation to the next, as well as encourage more land ownership by owner-operators.

My second recommendation deals with the issue of allowing an agricultural buyer of land with development value to bid more competitively for that land.

The third recommendation deals with a proposal that would allow contributions from a larger sector of the U.S. population that I hear is doing very well to create opportunities for the agricultural sector, which seems to have been left out of the current economic boom.

The first recommendation is for creation of a capital gains deferred tax account. Please note, this is a recommendation for deferred tax collection, not elimination of tax. What I am proposing here is merely deferring the collection of capital gains taxes to some later point in time.

Under the current Tax Code, like-kind exchanges are exempt from capital gains taxes. If a tract of land is sold, the seller has so much time to reinvest the money in land to avoid capital gains taxes. The unintended consequence is that now you have more agricultural land being owned by individuals who have demonstrated a willingness to sell land for a non-agricultural use.

A deferred capital gains tax would also aid in the transfer of farm land from one generation to the next, and allow for more owner-operators to actually own the land that they farm.

My recommendation No. 2 is to increase the tax deductibility of gifts of conservation easements on land to charitable institutions and governments. Under the current Tax Code, the charitable contribution as a tax deduction is allowed if a conservation or agricultural easement is placed on the land and the easement is donated to a qualified organization. This is a donation that can be utilized by farmers, and allows them to bid more competitively for the pur-

chase of land that has development potential but is not yet developed.

If this tax deduction were increased by a factor of two or more, the cash value of this deduction would be more in line with the value of the deduction. This would then be a more viable option, and allow the agricultural bidder to bid more competitively.

Recommendation No. 3 is creation of a tax deduction for contributions to build capital to fund link-deposit revolving loan funds. To encourage such contributions, the deduction should be 200 percent or more of the actual value of the contribution.

I personally like the idea of low-interest loans on farmland in exchange for conservation and agricultural easements. This would allow those who wish to purchase land for agricultural use to bid more competitively. What I am proposing is the Federal Government providing the mechanism, through the use of an increased tax incentive, to allow land trusts and other non-profits dedicated to conservation to raise capital to fund link-deposit revolving loan funds.

Now, moving on to conservation practices, this is a proposal to increase the allowable tax deduction for the cash expenses incurred during the installation of certain conservation practices, from 100 percent to 200 percent, or any percent greater than 100 percent.

I have been a supervisor on my local conservation board of supervisors for the past 12 years. We now have an agricultural as well as a land developer customer base. These are two very different customer bases, but when it comes to conservation and land stewardship these two groups have some common ground.

Both the agricultural community and the development community have a certain segment of their respective members that truly embrace sound conservation practices on the land. These are profitable entities, and a tax incentive would further increase the survivability of these companies. I believe we would all benefit if more companies and individuals with a conservation ethic were given an extra tax incentive to make them more competitive.

I would like to close by again thanking the Subcommittee for inviting me here today. I would like to thank Congressman Rob Portman for his support in encouraging this hearing. And finally, I would like to thank the Chairman for holding this hearing, because I feel these issues greatly impact our standard of living in this country. Thank you.

[The prepared statement follows:]

**Statement of Thomas C. Spellmire, Member, Legislative Committee,
National Association of Conservation Districts, Lebanon, Ohio**

Mr. Chairman, Members of the Committee, my name is Tom Spellmire. I am a farmer by occupation from the State of Ohio. I have for the past twelve years served voluntarily on my local Soil and Water Board of Supervisors and the local, state, and national RC&D Council. I had the opportunity to serve on then Governor George Voinovich's Farmland Preservation Task force of 1996-1997. I currently am a member of the National Association of Conservation Districts Legislative Committee.

I will cover two land-use issues in my presentation. Farmland Preservation and Conservation practices and suggested changes to the tax code.

Allow me to start with the issue of Farmland Preservation. In my opinion three changes could be made to the IRS Tax Code that would give current and future owners of farmland more options. The first recommendation deals with the issue of unintended consequences of current tax law and how a change would address retire-

ment issues and aid in the transfer of farmland from one generation to the next, as well as encourage more land ownership by owner-operators. The second recommendation deals with the issue of allowing an agricultural buyer of land with development value to bid more competitively. The third recommendation is a proposal that would allow contributions from the larger sector of the United States population that is doing very well to create opportunities for the agricultural sector which seems to have been left out of this current economic boom.

RECOMMENDATION NO. 1—CREATION OF CAPITAL GAINS DEFERRED TAX ACCOUNTS.

Please note this recommendation is for a deferred tax collection, not an elimination of tax. What I am proposing here is merely deferring the collection of capital gains taxes to some later point in time. This would help deal with possibly unintended consequences of the current tax code.

Under the current tax code like-kind exchanges are exempt from capital gains taxes. I am sure that some would argue, and rightly so, that this enables landowners who become surrounded by urban development to sell their property for development and relocate their farm to another location using the tax-free like-kind exchange option. One problem with this scenario is that in some cases when the landowner goes to buy land in another location they are bidding just to avoid paying capital gains taxes. This gives them the ability to out-bid other potential buyers of the land. These buyers are more than willing to bid more than agricultural value for the property just to avoid paying capital gains tax. Once the sale is complete at the new location another potential scenario evolves. These new landowners in a farming community now have ties to the development community and view their purchases a little differently than an agricultural buyer. Are these new landowners really farmers or are they more accurately land speculators who happen to farm? You now have more agricultural land being owned by individuals who have demonstrated a willingness to sell land for a non-agricultural use.

It is this willingness to allow land to be converted to non-agricultural use that fuels the attitude that the best way a community can help its farming sector is to create the right atmosphere for development to non-agricultural use. When landowners with this attitude are approached by developers the cycle repeats itself over and over thus this desire to avoid capital gains taxes has created the unintended consequence of contributing to urban sprawl. Those who had intended to purchase the land and keep it in agriculture are very much overwhelmed by this whole process. A process that was triggered by an individuals desire to avoid capital gains taxes.

I am not proposing doing away with like-kind exchanges but rather creating another option for sellers of land subject to capital gains tax. A capital gains deferred tax account fund could be a viable investment option for a seller of land. The seller would deposit the proceeds from the sale of the land into the qualified fund. The investor would be subject to ordinary income tax rates on "interest" earned and withdrawn from the fund and subject to capital gains rates on any "principal" withdrawn. Thus, the tax on the sale merely would be deferred.

Another scenario that demonstrates the need for a capital gains deferred tax account is that farmers who are nearing retirement may need to sell their farm to provide retirement income. Unlike other people who build up a retirement nest egg and are able to withdraw retirement funds over a long period of time (and therefore defer the payment of tax on that retirement nest egg), such farmers are forced with an immediate capital gains tax. Under current tax law, a retiring farmer cannot practically utilize the like-kind exchange provisions of the Internal Revenue Code, because reinvesting in land does not meet their retirement needs.

Again, incentives could be implemented by amending the existing like-kind exchange provisions of the tax law to allow anyone selling real estate to defer payment of tax if sale proceeds are invested in a qualified fund. The investor in the fund could select from various payment options so that the investor would be taxed on payments from the fund when received. The investor would be subject to ordinary income tax rates on "interest" earned and withdrawn from the fund and subject to capital gains rates on any "principal" withdrawn. Thus, the tax on the sale merely would be deferred. Also, this would provide a mechanism that will specifically address the needs for retirement income of a farmer nearing retirement. This would allow a farmer to utilize the full value of the sale price of the farm to fund their retirement rather than the current system of after tax value. If the tax were deferred this would allow a landowner to seriously consider a bid that may reflect the agricultural value rather than be forced to consider only development bids knowing that the sale proceeds are subject to capital gains taxes. A deferred capital gains

tax would also aid in the transfer of farmland from one generation to the next and allow for more owner-operators to actually own the land they farm.

RECOMMENDATION NO. 2—INCREASE THE TAX DEDUCTIBILITY OF GIFTS OF CONSERVATION EASEMENTS ON LAND TO CHARITABLE INSTITUTIONS AND GOVERNMENTS.

Under the current tax code, a charitable contribution tax deduction is allowed if a conservation or agricultural easement is placed on land and the easement donated to a qualified organization. The amount of the tax deduction is the difference between the appraised fair market value and the agricultural value. This deduction is limited to no more than 50 percent of adjusted gross income per year but can be spread out over a period of up to five years. The actual cash value of this deduction is dependent on the tax bracket rate of the individual multiplied by the value of the deduction. This is a tax deduction that can be utilized by farmers and others so as to allow them to bid more competitively for the purchase of land that has development potential but not yet developed. The inequity that I see is in a scenario when a farmer is bidding against someone taking advantage of the like-kind exchange option of capital gains the advantage goes to like-kind exchanges. In this scenario an individual utilizing the like-kind exchange option can bid 20 percent higher for the land with no restrictions on the land use. For the sake of example this 20 percent is also the difference between the fair market value and the agricultural value. The farmer cannot bid as competitively because his tax incentive is limited to his tax rate times the value of the deduction. If this tax deduction were increased by a factor of two or more the cash value of the deduction would be more in line with the value of the deduction. This would then be a more viable option and allow the agricultural bidder to bid more competitively. This is another tool that would also aid in the transfer of farmland from one generation to the next and allow for more owner-operators to actually own the land they farm.

RECOMMENDATION NO. 3—CREATION OF A TAX DEDUCTION FOR CONTRIBUTIONS TO BUILD CAPITAL TO FUND LINK-DEPOSIT LOAN FUNDS. TO ENCOURAGE SUCH CONTRIBUTIONS THE DEDUCTION SHOULD BE 200 PERCENT OR MORE OF THE VALUE OF THE CONTRIBUTION.

Allow me to explain by starting with some background information first.

Low interest loans on farmland in exchange for conservation or agricultural easements would allow those who wish to purchase land for agricultural use to bid more competitively. The federal government does not have a very good track record when it comes to administering low interest loan programs in the agricultural sector. What I am proposing is the federal government providing the mechanism through the use of an increased tax incentive to allow Land Trusts and other non-profits dedicated to conservation to raise capital to fund link-deposit revolving loan funds. Contributions to non-profits are currently tax deductible so this is a proposal to increase the incentive by allowing the contributions to be deducted at more than face value to qualified non-profits. The Land-Trusts and other non-profits would be required to enter into link-deposit agreements with various financial institutions and banks. The banks would agree to administer the loan funds for a fee. This would mean that it is the bank that determines the credit-worthiness of potential borrowers not the non-profits. In exchange for the fee the bank would guarantee the principal amount and a nominal return on the deposit to the non-profits. The liability for any delinquent loans would be the bank's responsibility. The loan funds deposited by the non-profits would be secured by the financial security of the bank. The non-profits could receive a nominal return on the fund to provide operating capital. The Land-Trusts and non-profits would set the overall parameters of the loan program and be responsible for holding the conservation or agricultural easements. Under this scenario if the non-profit agreed to a 1 percent return on capital and the bank agreed to a 2 percent administrative fee the farmer could borrow the funds at a 3 percent interest rate. This would allow the farmer to bid more competitively for land to purchase and keep in agricultural production. This would also allow the sons and daughters of retiring farmers to purchase the family farm for a price that allows the older generation to fund their retirement and the younger generation to service the loan from the proceeds from the farm. This is another tool that would also aid in the transfer of farmland from one generation to the next and allow for more owner-operators to actually own the land they farm.

Conservation and Land Stewardship Issues and the IRS Tax Code

This is a proposal to increase the allowable tax deduction for the cash expenses incurred during the installation of certain conservation practices from 100 percent

to 200 percent or any percent greater than 100 percent. Again, allow me to start with some background information. Nationally Conservation Districts have a long tradition of administering voluntary conservation programs mainly targeted at the agricultural community. The Natural Resource Conservation Service provides the technical expertise for these voluntary measures. Some agricultural producers do not consider these to be voluntary since some of these are required for participation in USDA commodity programs. In more recent history some Conservation Districts have been administering local construction site erosion control measures. These measures usually fall under the heading of urban sediment control measures and have been adapted by their perspective counties. These are not voluntary conservation measures and are targeted at land developers. I have been a supervisor on my local Conservation Board of Supervisors for the past twelve years. During that time our district has added the element of administration of urban sediment and erosion control regulations for our county. We now have an agricultural as well as a non-agricultural customer base. These are two very different customer bases but when it comes to conservation and land stewardship these two groups have some common ground. Both the agricultural community and the development community have a certain segment of their respective members that truly embrace sound conservation practices on the land. There are a number of individuals and companies that project the image that they have incorporated conservation and land stewardship into their vision statements. These are profitable entities and a tax incentive would further increase the survivability of these companies. I believe we all would benefit if more companies and individuals with a conservation ethic were given an extra tax incentive to make them more competitive. For some reason people respond to tax deduction incentives disproportionately to the actual cash value and I believe now is a good time to utilize this option to promote conservation and land stewardship. A tax incentive would encourage more conservation practices to be implemented. It would also encourage more research and development into more efficient ways to meet conservation objectives. It is my understanding that the United States now has a budget surplus and at the same time Congress is trying to operate under the budget caps. By utilizing the tax code we would in effect be increasing the expenditures for conservation practices and at the same time Congress could operate under the budget caps. By initiating such a change to the IRS tax code the Conservation Districts efforts to initiate and implement conservation practices would be much easier.

I would like to close by again thanking the subcommittee for inviting me here today. I would like to thank Congressman Rob Portman for his support in encouraging this hearing. Finally, I would like to thank Chairman Amo Houghton for holding this hearing for these are issues that greatly impact our standard of living in this great country. Again, Thank You for giving me this opportunity.

Chairman HOUGHTON. Thank you very much, Mr. Spellmire.
Mr. Gates.

STATEMENT OF JOHN S. GATES, JR., PRESIDENT AND CHIEF EXECUTIVE OFFICER, CENTERPOINT PROPERTIES, OAK BROOK, ILLINOIS, AND MEMBER, THE REAL ESTATE ROUNDTABLE

Mr. GATES. Mr. Chairman and Members of the Subcommittee, my name is John Gates. I am president and chief executive officer of Center Point Properties, which trades on the New York Stock Exchange. I am here today on behalf of The Real Estate Roundtable, and am joined in this by eight other national real estate organizations.

Center Point Properties has a portfolio of more than 30 million square feet of industrial property in Chicago, making us by far the largest owner and developer of industrial property in the Nation's largest industrial property market. We are quite experienced in inner city and existing community redevelopment.

And redevelopment of existing sites is an important component of any community's growth and development plan. However, sev-

eral Federal tax and non-tax policies are very serious impediments to redevelopment; particularly the redevelopment of the brownfield sites.

The U.S. Conference of mayors currently estimates that there are over 400,000 brownfield sites across the Nation. Development of these sites would help restore many blighted areas, create jobs where unemployment is high, and ease pressure to develop beyond the fringes of our existing communities. Small urban centered businesses often benefit most directly by this type of redevelopment.

Many brownfields properties are located in inner cities, precisely where many businesses currently want to be. The economics are right; critical infrastructure, including existing transportation resources, is already in place; and the work force is in close proximity.

I know that Congressman Weller is very aware of these dynamics, because he has played an enormous role in initiating and helping Center Point to work through the Byzantine Federal rules and policies necessary to recycle the contaminated and now dormant Joliet Military Arsenal into a 25,000-acre national park, veterans cemetery and, adjacent to it, a 2,000-acre transportation, manufacturing, and distribution complex.

Unfortunately, while many of these sites have great potential, they remain a province of Federal policies such as Superfund that perpetuate the legacy of urban decay by inhibiting the very kinds of investments our company and many others like us are in the business to make.

The potential of open-ended Superfund liability for prospective purchasers of brownfields, no matter how remote, is an imposing Federal impediment to brownfields redevelopment, and often a deal killer. If Federal policies were changed so that the potential liability for would-be purchasers would become clearer, the real estate community would be far more ready, willing, and able to invest private capital in brownfields redevelopment. Additionally, we need more certainty that clean-up decisions made at the state level are also recognized as final determination under Federal law.

With respect to tax policies affecting redevelopment, it is important to focus on current tax treatment of environmental remediation costs. These costs primarily involve brownfields, but also include clean-up for leaking underground storage tanks, asbestos removal, and lead-based paint abatement.

Current law generally requires that clean-up costs be capitalized and added to the basis of the asset, which in most cases is the land. Since the land is not depreciable, these costs cannot be recovered unless the property is sold. This discourages long-term ownership and long-term investment. Recognizing the burden that this tax treatment imposes, Congress recently enacted an important exception for Empowerment Zones, Enterprise Zones, and certain targeted high-poverty areas, that allows the costs to be deducted in the year that they are incurred.

We are pleased that many Members of this Committee recognized what a serious impediment the tax treatment of environmental remediation costs is to clean-up and redevelopment. Mr. Weller's bill, H.R. 997, is particularly notable, because it would allow the immediate expensing of up to \$500,000 of remediation

costs, and a 5-year amortization of costs exceeding that amount. This approach would provide meaningful cost recovery, particularly to smaller redevelopment projects; yet is measured enough so as not to stimulate tax-driven development.

There are various other types of impediments to redevelopment, including the current depreciation rules on the depreciation of lease-hold improvements and the requirement that demolition costs must be capitalized.

In conclusion, we would urge Congress to act to remove Federal policies that are impediments to redevelopment. Brownfields remediation and redevelopment will particularly benefit if the dual impediments of Superfund liability and capitalized cost treatment are removed.

The result will be the injection of new capital into rehabilitation projects. Many small urban center businesses will benefit, resulting in substantial job creation and economic revitalization. Also, the viability of existing space will improve, and ease the pressure to develop greenfields, allowing for the preservation of far more open space. Thank you very much.

[The prepared statement follows:]

Statement of John S. Gates, Jr., President and Chief Executive Officer, CenterPoint Properties, Oak Brook, Illinois, and Member, The Real Estate Roundtable

INTRODUCTION

Mr. Chairman and Members of the Subcommittee, my name is John Gates. I am President and CEO of the CenterPoint Properties, a Chicago-based real estate investment trust, or REIT, publicly traded on the New York Stock Exchange. I am here today on behalf of The Real Estate Roundtable. The Real Estate Roundtable is the successor to the National Realty Committee, an industry organization which has advocated economically based real estate tax policies for three decades. Joining The Real Estate Roundtable in these comments is the American Seniors Housing Association; Building Owners and Managers Association, International; International Council of Shopping Centers; National Apartment Association; National Association of Industrial and Office Properties; National Association Realtors; National Association of Real Estate Investment Trusts; and National Multi Housing Council.

CenterPoint Properties is metropolitan Chicago's largest owner of industrial property. The Chicago region has more than 1.2 billion square feet of industrial property, making it the nation's largest and most diverse industrial property market.

Centerpoint Properties and a number of other members of the real estate organizations joining these comments, have substantial experience with environmental remediation and redeveloping brownfields. Several federal tax and non-tax issues play a role in brownfields redevelopment and redevelopment in general.

FEDERAL POLICIES IMPEDE REDEVELOPMENT

In our view, Congress and federal agencies should reform those laws and policies that impede the abilities of states and local communities to develop and grow as they deem in their own best interests. Redevelopment of existing sites and properties is an important component of any community's development plans. A number of federal policies—including federal tax policies—are impediments to redevelopment and other forms of so called "smart growth."

Brownfields remediation is a highly visible area where federal policies are hindering redevelopment where it is often needed most. The U.S. Conference of Mayors estimates that there are over 400,000 brownfields sites across the country. Development of these sites would help restore many blighted areas, create jobs where unemployment is high and ease pressure to develop beyond the fringes of communities. Small, urban centered businesses often benefit most directly by this redevelopment.

Many brownfields properties are located in inner cities—precisely where many businesses want to be. The economics are often right. Critical infrastructure, including transportation, is already in place and the workforce is in close proximity. I know Congressman Weller is very aware of these dynamics because he has played

an invaluable role in helping CenterPoint work through the Byzantine federal rules and policies necessary to recycle the now dormant Joliet military arsenal into a thriving economic development.

Unfortunately, while many of these sites have great potential, they remain the province of federal policies, such as Superfund, that perpetuate a legacy of urban decay by inhibiting the very kinds of investments our company and many others are in business to make.

The potential of open-ended Superfund liability for prospective purchasers of brownfields—no matter how remote—is an imposing federal impediment to brownfields redevelopment and often a deal killer. If federal policies were changed so that the potential liability would be purchasers became clearer, the real estate community would be far more ready, willing and able to invest private capital in brownfields redevelopment. Additionally, we need more certainty that cleanup decisions made at the state level are also recognized as final determinations under federal law.

To that end, we urge Congress to swiftly enact the kinds of reforms contained in H.R. 1300—the bipartisan Superfund bill sponsored by Congressman Boehlert and recently passed out of the House Transportation Committee 69 to 2. We also support the efforts of Congressman Greenwood to advance similar legislation in the Commerce Committee.

PROPER FEDERAL TAX POLICIES CAN AID REDEVELOPMENT OF EXISTING PROPERTIES

With respect to tax policies affecting redevelopment, it is important to focus in the current tax treatment of environmental remediation costs. These costs primarily involve brownfields but also include clean up for leaking underground storage tanks, asbestos removal and lead based paint treatments.

Current law generally requires that clean up costs be capitalized and added to the basis of the asset—which in many cases is land. Since land is not depreciable, these costs cannot be recovered until and unless the property is sold. Recognizing the burden that this tax treatment imposes, Congress recently enacted an important exception for contaminated sites in empowerment zones or certain targeted high poverty areas. In those cases, the costs may be deducted in the year they are incurred.

We are pleased that so many Members of this committee recognize what a serious impediment the tax treatment of environmental remediation costs is to clean up and redevelopment. Mr. Weller's bill, H.R. 997, is particularly notable because it would allow immediate expensing of the first \$500,000 of remediation costs and a 5 year amortization of costs exceeding that amount. This approach would provide meaningful cost recovery, particularly to smaller redevelopment projects, yet is measured enough so as not to stimulate tax driven development. We also applaud Mrs. Johnson's efforts in the recently vetoed Taxpayer Refund and Relief Act of 1999 to broaden the definition of brownfields qualifying for deductibility treatment under Section 198. Further, we consider H.R. 1630, a bill sponsored by Mr. Coyne and Mr. Rangel to make permanent the current law ability to deduct remediation expenses in empowerment zones, important and support its passage.

Other tax impediments to redevelopment include 39 year depreciation of leasehold improvements and the capitalization of demolition costs. We urge the immediate enactment of H.R. 844, Mr. Shaw's bill to change the depreciation treatment for leasehold improvements to 10 years. It is cosponsored by almost every member of the Ways and Means Committee and would more closely align the tax depreciation of the improvements with the economics of the lease transaction. This would help keep buildings modern and ease the pressure to develop new sites. Mr. Neal and Mr. English, the co-chairs of the Real Estate Caucus, have been particularly supportive of this bill.

Demolition can be an expensive cost component of a redevelopment project. Similar to environmental remediation costs, demolition costs must be capitalized to the land and this unfavorable tax treatment is an impediment to redevelopment. We believe demolition costs for non-historic structures costs should, at a minimum, be added to the basis of the building and depreciated. Mrs. Johnson has been supportive in this area and we look forward to working with her and other Members of the Committee on this issue.

CONCLUSION

In conclusion, we urge Congress to act to remove federal policies that are impediments to redevelopment. Brownfields remediation and redevelopment will particularly benefit if the dual impediments of Superfund liability and capitalized cost treatment are removed. The result will be the injection of new capital into rehabilitation projects. Many small, urban centered businesses will benefit resulting in sub-

stantial job creation and economic revitalization. Also, the viability of existing space will improve and ease the pressure to develop "greenfields" allowing for the preservation of more open space.

Chairman HOUGHTON. Thank you so much, Mr. Gates.
Mr. Tuchmann.

**STATEMENT OF E. THOMAS TUCHMANN, PRINCIPAL AND VICE
PRESIDENT, RESOURCE MANAGEMENT AND ENVIRON-
MENTAL AFFAIRS, U.S. FOREST CAPITAL, LP, PORTLAND, OR-
EGON**

Mr. TUCHMANN. Thank you, Mr. Chairman, and thank you, Members of the Subcommittee, for having this hearing today. And a special "Thank You" to Congresswoman Dunn and Congressman Tanner for your leadership on the Community Forestry and Agriculture Conservation Act and rural forestry and natural resource issues.

It is late, and I am last, so I will stick to three points. No. 1, there urgent policy issues that create a foundation for this discussion today on the minutia related to tax policy. And these issues relate to folks with strong values regarding private property rights, resource management, and resource protection. That is tearing at the fabric of rural communities throughout the Nation.

No. 2, we have a real restructuring of the forest products industry throughout this country. It is not driven by environmental issues. It is actually driven by business decisions. 10.6 million acres have been sold, or are under contract domestically over the last 1½ years. That compares to about 500,000 acres historically. This high disposition rate, is being driven by Wall Street demanding higher rates of return from commercial forest lands.

The bottom line on this is, those lands are going into more intensive forest management at a time when more conservation is being demanded. And it establishes incentives for those forests to be fragmented to non-forest uses.

So what do we do about this? And that brings me to my third point. Congresswoman Dunn and Congressman Tanner, along with your colleagues, have introduced the Community Forestry and Agriculture Conservation Act. The Act allows, as Mr. McKenna said, the establishment of non-profit private organizations to be established with environmental, industry, financial, and other opinion leaders from communities. The non-profits work to develop management plans for forest lands; they can acquire by issuing tax exempt debt through private marketplace at very low costs of capital. Tax exempt debt will provide great conservation benefits at very low cost to the taxpayer. It is a win-win, and it is one we think whose time has come.

Our company is working with communities across the country, from King County with Mr. McKenna to Mendocino County, which is home of the Headwaters Forest—which many of you have heard about—to Jacksonville, Florida. And we have also spoken with folks in Tennessee, for example, and New England, as well. Throughout the country we have seen a new demand for conserva-

tion-related provisions that this Committee can play a large role in helping us achieve.

We urge you to pass H.R. 1863—The Community Forest and Agriculture Conservation Act.

I would be happy to answer any questions you might have.

[The prepared statement follows:]

Statement of E. Thomas Tuchmann, Principal and Vice President, Resource Management and Environmental Affairs, U.S. Forest Capital, LP, Portland, Oregon

Mr. Chairman and Members of the Subcommittee, my name is Tom Tuchmann, Principal and Vice President of Resource Management and Environmental Affairs with U.S. Forest Capital, LP. I want to thank you for your leadership in holding this hearing on the impact of tax law on land use, conservation and preservation. I would also like to extend a special thanks to Congresswoman Dunn, along with Congressmen Tanner, Herger and Matsui, whose strong leadership on this issue have allowed communities from Florida to Washington to explore new ways to protect their environment and help stabilize rural forest-dependent communities. Your interest in developing new tools that will bring people together on these difficult environmental issues is sorely needed and greatly appreciated. I am honored to appear before you to testify in support of H.R. 1863, The Community Forestry and Agriculture Conservation Act of 1999.

By way of background, U.S. Forest Capital is a forestland investment services company servicing commercial and conservation landowners in acquisitions and dispositions, organizational development and resource management, and environmental affairs. Our company's expertise in the tax-exempt bond and capital markets, together with experience in natural resource policy, management and forest economics, has attracted us to innovative financial tools like the tax-exempt revenue bond concept being considered by this Committee.

CONSERVATION TODAY

It is no secret that forestland conservation is a popular but often controversial subject that inspires passionate debate among people. This debate began in earnest in the 1870s and continues 130 years later. At issue then as it is today, is the amount of land that should be publicly protected and the management intensity that should be allowed on private forests. Over the years, local, state, and federal governments have created public policy remedies that recognize conservation. These conservation programs are supported through: the tax code; federal regulatory, financial and technical assistance programs; state and local zoning and land use programs; and, state and local general obligation bond authorizations.

One hundred and thirty years of policy making have, thus, created a mosaic of land ownership patterns and land ownership objectives. While some may disagree, I believe that this mosaic is one of our nation's greatest assets. From commercially managed forests which provide products that people demand to our National Park and Wilderness systems that protect special places for their ecological and spiritual values, Americans enjoy unprecedented environmental and economic values.

Few would argue with the successful legacy of these efforts. Yet, governmental and philanthropic funding sources are limited at best, and regulatory efforts are often controversial and entail difficult tradeoffs with private property rights. Moreover, these programs, in our view, do not address one of the most pressing conservation needs of the next century; namely, halting the fragmentation of working forests throughout the nation and helping rural forest-based economies compete with capital investments that favor pavement over conservation. The challenge has been to develop new win-win conservation tools that:

- Create real conservation gains on private working forests;
- Do not require further governmental regulation;
- Protect property rights;
- Sustain rural employment; and,
- Provide cost efficient solutions for investors, landowners and governments.

CONSERVATION NEED

Fragmentation—Forest fragmentation and conversion to non-forest uses is taking place at alarming rates. For example, according to American Forests, a national conservation group, 107 acres or 50 percent of the Seattle, Washington, area has been

converted to non-forest uses since 1973. In the Baltimore-Washington corridor, forestland has declined by 265,000 acres or 32 percent.

While conversion lands must be allocated for economic growth, this growth should also be balanced with natural resource conservation in a manner that protects both our environment and our rural natural resource dependent economies. Unfortunately, current programs do not provide the tools to generate the financial resources to manage fragmentation in a politically acceptable manner. Clearly, we should be able to generate a mutually acceptable way to keep working forests working. Meaning, those private forests that have been intensively managed for commercial products in the past will be protected in their forested condition in the future, along with the water quality and recreational and employment opportunities.

Forestland Dispositions—Dramatic changes taking place in the integrated forest product and pulp and paper industries create both a new need and opportunity for conservation-related forestland transactions. Historically, the forest products industry owned their forestlands as standing inventory to supply raw material for mills. As such, companies rarely valued these forests for their pure investment potential. Since the mid-1980s, this perspective has changed as pension funds and others investors have bought and managed forestlands to diversify their investment portfolio and reap their independent economic value. Their successes—returns on investment approaching 20 percent—and paper stocks' poor performance—in the low single digits—have not gone unnoticed on Wall Street. Thus, since 1997, more than 10.6 million acres of forestland have either sold or are currently under contract for sale nationwide. The combined value of these lands is approximately \$6 billion. Over the past eighteen months alone, 8.7 million acres of forestland have either sold or are approaching sale. And these are only transactions of \$50 million or greater.

U.S. Forest Capital expects the fundamentals that drive these forestland dispositions to remain strong for the next five years. Moreover, we expect that many of the 10.6 million acres that have been sold since 1997 will be refinanced and/or carved out for real estate disposition. In either case, the financial pressures on some of these lands could trigger significant pressure to increase harvest or further fragment the existing domestic forestland base.

COMMUNITY FORESTRY AND AGRICULTURE BONDS

People continue to debate how much forestland should be protected and how much should be commercially managed. We believe one land ownership category that could bring people together has not been fully explored; namely, private non-profit forestry entities that can harness the power of the market place in a way that keeps working forests working with a "light on the land" approach. This is a tall order for sure, but also one that holds great promise for people that hold both environmental and commercial perspectives.

The Concept—For three years, U.S. Forest Capital has been working closely with experts from the environmental, landowner, and financial communities to explore how to conserve working forests by bringing often disparate parties together to jointly manage their operation. The result is a new conservation tool that meets these objectives while protecting landowner property rights and local communities' economic well being. In short, tax-exempt revenue bonds are issued to allow for the acquisition of forest and agricultural land by private non-profit, 501(c)(3) entities. The low-cost bonds would be revenue bonds, backed by the revenue stream generated by the low-impact management of the land. The land would be owned by the private, non-profit entity and the public benefit would be afforded by the:

- Lower cost of capital associated with tax-exempt bonds;
- Diversity of decision makers on the non-profit board; and,
- Lack of need to maximize financial returns.

To issue the tax-exempt bonds, the non-profit board must:

- Place a permanent conservation easement on the property;
- Exceed relevant environmental laws;
- Complete a multi-resource management plan;
- Provide for a qualified third-party to hold the easement; and,
- Provide the third-party easement holder with adequate funds to monitor and enforce the easement.

Monitoring and enforcement of the public benefits outlined above are achieved through:

- Local government hearings prior to bond issuance;
- Internal Revenue Service approval of the 501(c)(3) and on-going review of conservation purposes for which the non-profit was established;
- Legally binding bond documents which are drafted to assure investors that the non-profit's activities will remain tax-exempt;

- The third-party easement holder who will be paid by the land owning non-profit to monitor and enforce the easement;
- Conservation and public interests on the non-profit board of directors; and,
- Normal local, state and federal regulatory compliance.

Attachment 1 summarizes the primary activities that are needed to achieve a successful tax-exempt transaction.

Power of Tax-Exempt Debt—If a non-profit meets the stated requirements, it can raise hundreds of millions of dollars from private investors at a very low cost to the federal treasury. The tax-exempt market is well established with approximately \$150 billion issued annually for public benefit entities such as hospitals, education facilities and transportation infrastructure. Premier municipal underwriting companies such as Seattle Northwest Securities and San Francisco's Stone & Youngberg believe that demand for conservation based bonds will be significant.

See Attachment 2 for an analysis of the present net value of timberlands—at tax-exempt and commercial rates—which can be supported by three different harvest scenarios for property in King County, Washington. These numbers were generated from real forestland data that was provided by a potential seller.

Public Benefits at Low Public Cost—Currently public and non-profit organizations fund acquisitions through annual appropriations, philanthropic contributions and tax incentives. As outlined above, these programs have and are continuing to protect some of the nation's most special places. Yet, as also outlined above, these tools have limited utility for acquisitions over \$50 million in that there just is not the level of revenue on an ongoing basis to generate the funds needed given the current disposition rate.

By allowing private, non-profit entities to access the tax-exempt debt markets, the Federal government can achieve the conservation benefit that people are demanding, while doing so at a fraction of the cost. No other financial vehicle provides the public leveraging of private investment like tax-exempt bonds. For example, the Redwood Forest Foundation—a non-profit established in anticipation of taking advantage of Community Forestry Bonds—would like to issue \$200 million in tax-exempt bonds to buy up to 200 thousand acres of working forests in Northern California. Such an issue would only cost the Federal treasury \$66 million in foregone tax revenues over a 40-year period. This represents a modest investment by the taxpayer for significant conservation gains that will be achieved for current and future generations.

POLICY BENEFITS

While no conservation tool can provide all things to all people, community forestry and agriculture bonds can comprehensively provide more benefits to more people on large scale working forests than currently exist. Community forestry and agriculture bonds:

Work for landowners and the timber industry because:

- Property rights are maintained as all transactions will be completely voluntary and no regulatory entity at any level exists to force transactions;
- Landowner liquidity is enhanced at fair market value;
- Timber supply will be maintained for either the seller or other buyers depending on the seller's fiber needs;
- Collaborative forums with a market-based tool will be established, and,
- Goodwill opportunities will be expanded.

Work for the environment because:

- Forestlands throughout the nation will be permanently protected from conversion to non-forest uses;
- Non-timber benefits such as water quality, fish and wildlife habitat, and non-commercial forest-dependent biological species will be greatly enhanced;
- Environmentalists will serve on decision making boards that oversee management of large-scale forests; and,
- Scarce public and philanthropic resources dedicated to conservation will be leveraged to allow more acres to be protected over time.

Work for communities because:

- Community officials become facilitators among constituents as compared to judges that must choose among lose-lose options;
- Environmental compliance opportunities will be enhanced;
- Forestry operations that provide a sustainable supply of forest products will help stabilize the economic stability of rural forest dependent communities; and
- The bulk of acquisition costs will be borne by the investor, thus there will be little or no cost borne by the local governmental budgets.

U.S. Forest Capital is currently working with two non-profits comprised of environmental, landowner, financial and elected officials who are seeking to protect working forests and provide additional conservation benefits to their rural forests. The first is the Redwood Forest Foundation, mentioned above, which is located in Mendocino County, California, and the second is the Evergreen Forest Trust in Washington state. We have also begun working with the Mayor of Jacksonville, Florida to scope out opportunities for their working forests as well.

LEGISLATIVE NEEDS

Current law allows qualified non-profit organizations to have tax-exempt debt issued for public benefits. However, the asset that is purchased or constructed with bond proceeds must, in general, be owned and used appropriately by the non-profit during the term of the bonds. In addition, the term of the bonds cannot be significantly longer than the useful life of the financed property, with land being deemed to have a useful life of 30 years. This makes sense for hospitals, for example, in which the building financed with bond proceeds may not be sold or leased during the term of the bonds, and the term of the bonds generally matches the useful life of the building. For renewable resources like forests, however, a clarification is needed because the trees (and land) for which the bonds were issued must be harvested, in the manner outlined above, to service the debt, and the financed asset, by its very nature, has an extremely long useful life. Current law is silent on these points; therefore, for community forestry and agriculture bonds to be sold, the law must be clarified to allow the debt service on long-term bonds to be paid with timber harvest revenues.

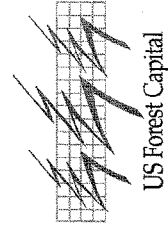
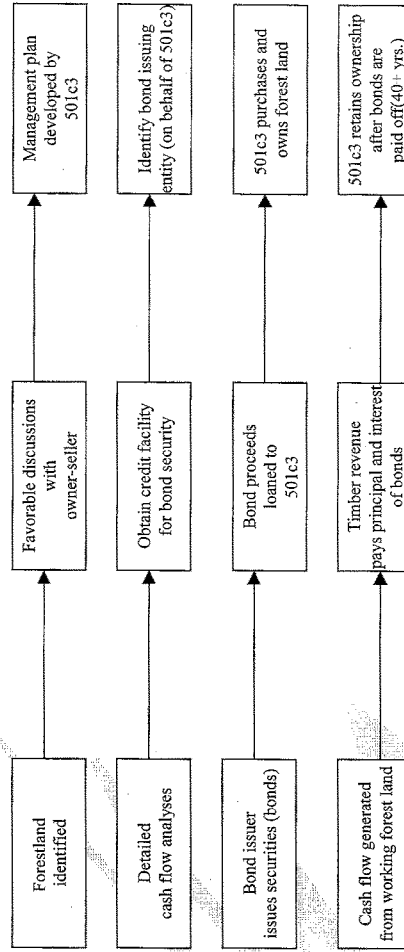
H.R. 1863, The Community Forestry and Agriculture Conservation Act clarifies the tax code to allow tax-exempt revenue bonds to be issued for conservation purposes. The bill clarifies that standing tress and tree growth may be harvested, mandates what public environmental benefits must be achieved and includes provisions that prohibit abuse. The bill is supported by a wide range of groups including, among others, the: World Wildlife Fund, Trust for Public Lands, Land Trust Alliance, Society of American Foresters, American Sportfishing Association, Plum Creek Timber Company, Mendocino Redwood Company, Harwood Forest Products, King County Council and the Mendocino County Council.

H.R. 1863 is the only tool available today that can leverage the power of Wall Street and private investment to generate the capital needed to allow private non-profit entities to engage in large scale transactions for conservation purposes. Tax-exempt revenue financing would be a fantastic tool to use in concert with Congressman Portman's bill (H.R. 2880) and other ideas that focus on smaller scale but equally important lands owned primarily by non-industrial landowners. It would also be a great complement to currently authorized conservation tools such as the Land and Water Conservation Fund.

Mr. Chairman, and Members of the Subcommittee, on behalf of the many communities around the nation who are seeking to keep working forest and agricultural lands working, I urge you to pass H.R. 1863. Time is running out.

Again, thank you for holding this hearing. I would be pleased to answer any questions you may have.

Attachment 1
Community Forestry Bonds (TM)
Overview of Financing Steps



Attachment 2 – Tax Exempt Rates at Work
Table 1. Harvest Scenarios by Harvest Methods

Harvest Scenario	% of Total Acres in Harvest Method					
	Short Rotation	Long Rotation	Two Tiered	Three Tiered	Riparian Protection	Set Asides
Light	2%	22%	33%	17%	8%	18%
Medium	30%	28%	11%	5%	8%	18%
Commercial	53%	30%	5%	0%	3%	9%

Table 2. Present Net Value of Harvest Scenario by Present Net Value

Harvest Scenario	Tax Exempt Rates @ 5.5%		Taxable Rates @ 8.5%	
	Tax Exempt Rates @ 5.5%		Taxable Rates @ 8.5%	
Light	\$58 million		\$31 million	
Medium	\$69 million		\$38 million	
Commercial	Not Applicable		\$54 million	

Source: Forest Analytics, White Salmon, Washington for: *Saving our Working Landscapes: Assessing a New Financing Tool for Farm and Forest Conservation*, Fox, Nancy and Eugene Duerning, King County Department of Natural Resources, Seattle, W/A, September, 99

Tables 1 and 2 were generated from real forestland data for working forests threatened by conversion to non-forest uses between Seattle, WA and the Mount Baker-Snoqualmie National Forest. The data show that a non-profit could generate \$58 million at a tax-exempt rate using a light harvest scenario whereas they would have to harvest at commercial levels to achieve a similar cash flow at taxable rates. Therefore, a non-profit could acquire a parcel for approximately \$60 million. If the price of the property was lower, they could implement an even lighter scenario. If it was more expensive, they could implement the medium scenario. Thus, the flexibility of Community Forestry Bonds is captured in a non-profit's environmental and financial objectives.

Chairman HOUGHTON. OK. Thanks very much.
Mr. Coyne.
Mr. COYNE. No questions.
Chairman HOUGHTON. All right.
Ms. Dunn.

Ms. DUNN. Thank you very much, Mr. Chairman. I congratulate all you gentlemen for coming in from such long distances to join us today. And we are very glad to have you here. Obviously, my question will be going to Mr. McKenna, and also to Mr. Tuchmann.

You gentlemen have both talked in your testimony about bringing people together and getting elements of our society to work together as we look toward setting aside important pieces of agricultural or forest property. Tell me what that really means.

Mr. McKENNA. Well, bringing people together, first of all, will occur when we form these non-profits. These non-profits will have boards—in fact, we have already formed one—that will include conservationists, representatives of large commercial landowners, local government officials. These are representatives of many of the competing interests that often clash over forest policy.

It will bring those competing interests together on a larger scale, as well, because 1863 gives us a tool that advances all of our interests. It will provide liquidity to these large commercial property owners who often in King County own land which is too close to the urban area to be intensively commercially harvested, but is outside of the urban growth area so it cannot be intensively developed for homes either because it is outside of that urban growth boundary.

But it will provide values to the environmental community and to all of us who are concerned about environmental values like water quality, by keeping the forests in production but at a much lighter rate, and by keeping the forests out of commercial development for housing, for example.

And so, it strikes the common ground among all of those competing interests, and literally brings them together to put together deals, such as deals that we are actually working on today with those large commercial landowners and with conservation groups.

Ms. DUNN. Mr. Tuchmann.

Mr. TUCHMANN. Yes, I would just add that one of the problems in natural resource policy right now is many Americans want decision making input on lands that they only have peripheral control of, whether it is public lands or private lands. For the first time, these non-profits will allow the environmental community and the industry to share environmental and economic responsibilities. The conservation community will have the opportunity to implement an environmentally-oriented management plan and be required to generate only enough revenues to service the debt. The industry will have a responsibility to protect those environmental attributes and at the same time maintain timber supply and jobs. So, together, on a board of directors of a private non-profit they will protect the environment, provide jobs, and provide a good investment vehicle.

Ms. DUNN. And that is important because there is some cost related to this provision, and we want to make sure that the taxpayers get the benefits of that cost back.

Mr. McKenna, are there any particular pieces of property in your area and my area, the Seattle area, that you are currently working on?

Mr. McKENNA. Yes. We are working with one large commercial landowner, a forest company, on a parcel which is several thousand acres in size. And it is outside of the urban growth boundary, but it is close enough that it really cannot be intensively commercially harvested. There would be a huge outcry if it were clear cut—un-

like their lands farther up in the mountains which are under the usual commercial practices.

At the same time, although it cannot be developed for subdivisions because of our growth management policies, it is in 5- and 10- and 20-acre zoning. And what that means is that folks who want to buy their 5- or 10- or 20-acre estates are out there actively seeking these properties.

And what happens when they build their mini-estates is that the forests become fragmented, they are taken out of working forest status. But the ecology is fragmented as well, as we cut roads in to serve those homes. And inevitably, there are impacts on water quality. And of course, as that property goes into private home ownership, it is really lost as open space. And it loses a lot of its value as wildlife habitat as well.

So it is that land that is between the mountains, the national State forest lands, and the suburban and urban areas, that we are really focusing on here.

Ms. DUNN. Thank you. Mr. Chairman, I do hope that we can encourage the Committee to take a serious look at H.R. 1863. These properties are slipping away from us every single year, and it is just so important. Those of us in the Northwest are particularly concerned about what is happening. And as you know, we are facing the prospect of the first urban listing of an endangered species, and that is of great concern to us. But we must protect these properties. And I think that this proposal is a very, very good one.

And I thank you gentlemen, for coming to testify.

Chairman HOUGHTON. All right. Thanks very much.

Look, we have got about 2 minutes here. So if anybody has a question? John, have you got a question? Could you ask it quickly, and then we will move on.

Mr. TANNER. Yes, thank you, Mr. Chairman. I want to thank you for holding this hearing, and I want to thank the panel. And I want to ask Mr. Tuchmann, how does 1863, in your view, complement the Land and Water Conservation Fund? And also, how does it relate to the other bill we are considering, 2446, the Better America Bonds Act?

Mr. TUCHMANN. Congressman, just real briefly, they complement very well. The Land and Water Conservation Fund and Better America Bonds are focused primarily on preservation of special places the urban-rural interface. Our effort is more focused on working forests that are being converted to non-forest uses. They could complement each other very well, in terms of leveraging both public and private moneys.

Chairman HOUGHTON. Mr. Portman.

Mr. PORTMAN. Mr. Spellmire, thanks again for your testimony. Your focus a lot was on capital gains. And I just wondered, you had not commented on some legislation that came up earlier in the hearing, and that is H.R. 2497, by Congressman Pitts.

It is called the Open Space Preservation Act of 1999. And it deals with both estate tax and capital gains, but it excludes from income the revenues from the sale of a property covered by a qualified covenant that restricts the land to farming use only.

I just wondered, Tom, if you had any time to look at that legislation; if so, if you had any thoughts on it?

Mr. SPELLMIRE. I have not really looked at it, other than the briefing that I was given. To me, though, it sounds like it is something that would address part of this issue anyhow. A lot of farmers are looking for a way that they can make these transitions and not be subject to the capital gains.

Part of the problem with capital gains is, a lot of people that own ground—I mean, there are legal ways to circumvent capital gains, through charitable remainder trusts and all these other tools that are out there. But a lot of farmers, for some reason, the people who actually own the ground, feel very uncomfortable using those tools.

Mr. PORTMAN. Yes.

Mr. SPELLMIRE. They need a much more direct approach. And that sounds like a much more direct approach.

Mr. PORTMAN. Thank you again for your testimony and for coming.

Chairman HOUGHTON. Thanks, Mr. Portman.

Mr. Weller.

Mr. WELLER. Mr. Chairman, thank you. I do have one question I want to direct to Mr. Gates. But I was also going to ask unanimous consent of the Committee if I were to submit some additional questions of Mr. Gates, that his answers be put into the record.

Chairman HOUGHTON. It is just a function of time. Time is in your hands.

Mr. WELLER. OK. Thank you. Mr. Gates, thank you very much for traveling all the way from Oak Brook, Illinois, to be here today and to participate in today's panel. And I also want to commend you and all of the good people in your organization that I have had the opportunity to work with in redevelopment of the Joliet Arsenal and to restore the jobs that were once at the Joliet Arsenal, as well as some of the other projects that you are involved in on the South Side of Chicago and the south suburbs. I want to thank you for that, and for participating today.

And I am going to direct one question, and I will submit to you some additional questions, which I would ask if you could respond to. And we will submit them to the record for the purpose of this hearing.

But one of the focuses of this hearing today has been on the tax incentive that we provided for brownfields redevelopment and brownfields clean-up that was in the 1997 Balanced Budget Act. And that was, of course, targeted to specific types of communities, tending to be low-income communities or Empowerment Zones or areas adjacent to low-income Census tracts.

And I am an advocate, of course, for expanding that tax incentive so any community anywhere in Illinois or the United States would be able to enjoy that tax incentive to clean up a brownfield in the community. And I was wondering, what is your recommendation, as a businessperson, as the best way to improve the tax incentive so it would work toward the goal of redeveloping brownfields, restoring jobs, doing the environmental clean-up that is necessary; but also be workable? Do you have some specific suggestions?

Mr. GATES. Yes. What you are trying to do is level the playingfield. One is considering making a choice between approving a greenfield site, where one can begin to develop immediately, versus a brownfield site, where there are delays and significant up

front costs for clean-up. You are trying to level the playingfield to make the economic options or the economic viability of the two be roughly the same. You do not want to over-incent, however, brownfields situations and as a result spur development which is not driven by the marketplace overall.

I do actually like the piece of legislation that you have proposed, 997, because it does strike a balance between the two. It provides, particularly for smaller sites, a very easy way of compensation for the up front costs; but yet it is capped at a level that does not encourage, I am going to call it, uneconomic development, like maybe some of the tax laws we had in the 'eighties.

But I think it is also very, very simple to administer. It is simply something that is done in your tax return. It does not require special, unusual financial instruments that do not trade in the public markets. It does not require a lot of consultants, so on and so forth. So I think if that type of incentive were broadened out of the specific Enterprise Zones into maybe other existing communities, you would certainly see a lot of these 400,000 brownfield sites get more attention than they are currently getting.

They are there, but it is just too easy to go into a virgin piece of ground, as opposed to dealing with all the hassles of clean-up and consultants and the regulatory environment.

Mr. WELLER. Well, the point you brought up about the greenfields is a good one, because it is estimated that for every greenfield industrial site, it consumes five times as much land as an existing brownfield, if you were to redevelop a brownfield. That is one of the statistics I have seen.

I would like to provide some additional questions in writing to you, if you would provide answers. And we will submit them to the record.

I recognize we are beyond the hour of 4 o'clock so, Mr. Chairman, thank you for allowing me to answer that question. Mr. Gates, thanks for being here today.

Mr. GATES. Thank you.

Chairman HOUGHTON. Thank you. Thank you, everybody. The hearing is adjourned.

[Whereupon, at 4:04 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

Statement of Jaime Steve, Legislative Director, American Wind Energy Association

The American Wind Energy Association or AWEA, respectfully submits this testimony in support of H.R. 750, Rep. Bill Thomas' legislation providing for a five-year extension of the wind Energy Production Tax Credit (PTC). (Language identical to the text of H.R. 750 is contained in H.R. 4538, the Energy Efficient Technology Tax Act).

One of the pro-business, pro-environment provisions contained in H.R. 4538 is a five-year extension of the existing 1.5 cent per kilowatt-hour Production Tax Credit (PTC) for electricity produced using wind energy resources. (Section 45 of the Internal Revenue Code). An immediate extension of this provision is crucial if we are to see significant growth in the domestic wind energy industry.

STRONG BI-PARTISAN SUPPORT FOR WIND ENERGY TAX CREDIT EXTENSION

- A five-year PTC extension bill by Rep. Bill Thomas (H.R. 750) has attracted more than 175 sponsors, including 27 of the 39 members of the Ways and Means Committee.
- A companion bill by Sen. Chuck Grassley (S. 414) has attracted 25 Senate sponsors including 10 members of the Finance Committee.
- A four-year extension of the PTC was contained in the \$792 billion Congressional tax package (H.R. 2488).
- A five-year PTC extension is part of the Administration's FY 2000 budget request. (The same provision was contained in the FY 1999 request).
- *Cost: \$76 million* over five-year (source: Joint Committee on Taxation).

WIND PTC NOT INCLUDED IN CURRENT HOUSE EXTENDERS PACKAGE

The wind energy Production Tax Credit (PTC) extension was deleted from the Ways and Means Committee tax extenders package adopted by the Committee on Friday, September 24.

EXPLANATION OF CURRENT LAW

The Production Tax Credit (PTC) provides a 1.5 cents per kilowatt-hour credit (adjusted for inflation) for electricity produced from a facility placed in service between December 31, 1993 and June 30, 1999 for the first ten years of the facility's existence. The credit is only available if the wind energy equipment is located in the United States and electricity is sold to an unrelated party. Under current law, the tax credit qualification date expired on June 30, 1999. A five-year extension would create a new sunset date of June 30, 2004.

The Energy Policy Act of 1992 (EPAct) enacted the PTC as Section 45 of the Internal Revenue Code. The credit is phased out if the price of wind generated electricity is sufficiently high. In report language accompanying EPAct (H. Rpt. 102-474, Part 6, p. 42), the Ways and Means Committee stated, "The Credit is intended to enhance the development of technology to utilize the specified renewable energy sources and to promote competition between renewable energy sources and conventional energy sources."

Since its inception, the PTC has supported wind energy development and production. In the 1980's, electricity generated with wind could cost as much as 25 cents per kilowatt-hour. Since then wind energy has reduced its cost by a remarkable 80 percent to the current levelized cost of between 4 and 5 cents per kilowatt-hour.

The 1.5 cent per kilowatt-hour credit enables the industry to compete with other generating sources being sold at 3 cents per kilowatt-hour. The extension of the credit will enable the industry to continue to develop and improve its technology to drive costs down even further and provide Americans with significantly more clean, emissions-free electricity generation. Indeed, experts predict the cost of wind equipment alone can be reduced by another 40 percent from current levels, with an appropriate commitment of resources to research and development and from manufacturing economies of scale.

CONTRIBUTIONS OF WIND POWER

Wind is a clean, renewable energy source which helps to protect public health, secure a cleaner environment, enhance America's national security through increased energy independence, and reduce pollution. In fact, reducing air pollutants in the United States will necessitate the promotion of clean, environmentally-friendly sources of renewable energy such as wind energy. Further, renewable energy tech-

nologies as wind power should play an important role in a deregulated electrical generation market.

Wind power alone has the potential to generate power to provide the electric energy needs of as many as 10 million homes by the end of the next decade. The extension of the PTC will not only assure the continued availability of wind power as a clean energy option, but it also will help the wind energy industry secure its position in the restructured electricity market as a fully competitive, renewable source of electricity.

SIGNIFICANT ECONOMIC GROWTH POTENTIAL OF WIND POWER

The global wind energy market has been growing at a remarkable rate over the last several years and is the world's fastest growing energy technology. The growth of the market offers significant export opportunities for U.S. wind turbine and component manufacturers.

The World Energy Council has estimated that new wind capacity worldwide will amount to \$150 billion to \$400 billion worth of new business over the next twenty years. Experts estimate that as many as 157,000 new jobs could be created if U.S. wind energy equipment manufacturers are able to capture just 25 percent of the global wind equipment market over the next 10 years. Only by supporting its domestic wind energy production through the extension of the PTC can the U.S. hope to develop the technology and capability to effectively compete in this rapidly growing international market.

Finally, we must stress that the immediate extension of the PTC is critical to the continued development of the wind energy industry. Since the PTC is a production credit available only for energy actually produced from wind facilities, the credit is conditioned on permitting, financing and construction of the facilities. The financing and permitting requirements for a new wind facility often require 2 to 3 years of lead time. With the lapse of the credit on June 30, 1999, utilities, investors, and wind energy developers have been reluctant to commit to any new projects.

The American Wind Energy Association appreciates the opportunity to submit written testimony on this matter. We stand ready to assist the Committee in any way regarding the five-year extension of the wind energy Production Tax Credit.

Thank you.

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WIND ENERGY PRODUCTION TAX CREDIT (PTC) (106TH CONGRESS)

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M. McNulty (D-NY)
Carrie Meek (D-FL)
George Miller (D-CA)
David Minge (D-MN)
Dennis Moore (D-KS)
Jerrold Nadler (D-NY)
Richard Neal (D-MA)
James Oberstar (D-MN)
Solomon Ortiz (D-TX)
Frank Pallone (D-NJ)
Donald Payne (D-NJ)
Ed Pastor (D-AZ)
Nancy Pelosi (D-CA)
Collin Peterson (D-MN)
Owen Pickett (D-VA)
Earl Pomeroy (D-ND)
David Price (D-NC)
Charles Rangel (D-NY)
Lynn Rivers (D-MI)
Ciro Rodriguez (D-TX)
Steven Rothman (D-NJ)
Martin Sabo (D-MN)
Loretta Sanchez (D-CA)
J. Schakowsky (D-IL)
Robert C. Scott (D-VA)

HOUSE: H.R. 750 (CONT.)

Adam Smith (D-WA)	<u>K. Thurman (D-FL)</u>	Henry Waxman (D-CA)
Vic Snyder (D-AR)	S. Tubbs-Jones (D-OH)	Anthony Weiner (D-NY)
John Spratt (D-SC)	Mark Udall (D-CO)	Robert Wexler (D-FL)
Charlie Stenholm (D-TX)	Tom Udall (D-NM)	Lynn Woolsey (D-CA)
Bart Stupak (D-MI)	Bruce Vento (D-MN)	David Wu (D-OR)
Ellen Tauscher (D-CA)	Mel Watt (D-NC)	Albert Wynn (D-MD)
INDEPENDENTS [1]		
Bernie Sanders (I-VT)		

SUMMARY

A straight **5-year extension** (through July 1, 2004) of this existing provision providing a 1.5 cent per kilowatt-hour tax credit (adjusted for inflation) for electricity produced using wind resources (current PTC expired June 30, 1999).

PROBLEM

Although the PTC is a production tax credit available only for energy that is actually produced, the credit is inextricably linked to financing and developing continued wind energy production capacity. The financing and permitting requirements for a typical wind energy installation require two to three years of lead time at a minimum. Yet the PTC expired on June 30, 1999. This situation is drying up investments and halting future project planning just as wind stands to assume a new and competitive role in the domestic energy market.

PTC SPONSORS REPRESENTING 43 STATES

ALASKA:	Murkowski
ARKANSAS:	Snyder
ARIZONA:	Pastor, Salmon
CALIFORNIA:	Boxer, Feinstein, Becerra, Berman, Bilbray, Bono, G. Brown, Calvert, Capps, Condit, Cunningham, Dixon, Dooley, Eshoo, Farr, Horn, Lantos, Lee, Martinez, Matsui, Gary Miller, George Miller, Pelosi, Pombo, Sanchez, Tauscher, Thomas, Waxman, Woolsey
COLORADO:	DeGette, McNis, Schaffer, Udall
CONNECTICUT:	Gedjenson, Johnson, J. Maloney, Shays
FLORIDA:	Graham, Mack, Boyd, Davis, Deutsch, Diaz-Balart, Foley, Hastings, Meek, Ros-Lehtinen, Shaw, Stearns, Thurman, Weldon, Wexler, Young
GEORGIA:	Lewis, McKinney
HAWAII:	Abercrombie
IDAHO:	Simpson
ILLINOIS:	Blagojevich, Evans, Ewing, Gutierrez, Manzullo, Schakowsky, Weller
IOWA:	Grassley, Harkin, Boswell, Ganske, Latham, Leach, Nussle
KANSAS:	Moore
LOUISIANA:	Breaux, Jefferson, McCreary, Tauzin
MAINE:	Snowe, Allen, Baldacci
MARYLAND:	Bartlett, Cardin, Cummings, Gilchrest, Wynn
MASSACHUSETTS:	Capuano, Frank, Markey, McGovern, Neal
MICHIGAN:	Bonior, Camp, Ehlers, Kildee, Levin, Rivers, Stupak
MINNESOTA:	Grams, Wellstone, Minge, Oberstar, Peterson, Ramstad, Sabo, Vento
MISSOURI:	Clay, Danner, McCarthy
MONTANA:	Burns
NEBRASKA:	Kerrey, Bereuter
NEVADA:	Berkley
NEW JERSEY:	Pallone, Payne, Rothman, Saxton, Smith
NEW MEXICO:	Udall
NEW YORK:	Ackerman, Boehlert, Engel, Gilman, Hinchey, Houghton, Lazio, Lowey, McNulty, Nadler, Rangel, Weiner
NORTH CAROLINA:	Price, Watt
NORTH DAKOTA:	Courad, Dorgan, Pomeroy
OHIO:	Brown, Kaptur, Kucinich, Portman, Pryce, Tubbs-Jones
OKLAHOMA:	Largent, Lucas, Watkins
OREGON:	Smith, Wyden, Blumenauer, DeFazio, Walden, Wu
PENNSYLVANIA:	Coyne, Mascara
RHODE ISLAND:	Chafee, Kennedy
SOUTH CAROLINA:	Thurmond, DeMint, Graham, Spence, Spratt
SOUTH DAKOTA:	Daschle, Johnson
TENNESSEE:	Gordon
TEXAS:	Barton, Bentsen, Bonilla, Frost, Gonzalez, Green, Hall, Lampson, Ortiz, Paul, Rodriguez, Sessions, Stenholm, Thornberry
UTAH:	Cook
VERMONT:	Jeffords, Leahy, Sanders
VIRGINIA:	Davis, Goode, Pickett, Scott
WASHINGTON:	Murray, Baird, Dunn, Inslee, McDermott, Metcalf, Smith
WEST VIRGINIA:	Rockefeller
WISCONSIN:	Baldwin, Barrett, Kind, Kleczka

UPDATED 9/29/99

Statement of Bond Market Association

The Bond Market Association appreciates the opportunity to comment on the impact of tax laws on land use, conservation, and preservation, and in particular, on issues related to the innovative financing of land preservation projects. The Bond Market Association represents approximately 200 securities firms and banks that underwrite, trade, and sell debt securities both domestically and internationally. We are pleased that the Committee has chosen to explore ways to encourage land conservation and preservation using innovative financing solutions—without increasing the financial burden on our nation's states and localities.

BENEFITS OF TAX-EXEMPT FINANCING

Tax-exempt bonds are one of the most important sources of funding available to state and local governments for the financing of vital public projects. Tax-exempt bonds are efficient and well-understood, are popular among investors, and have an established market infrastructure with a history that dates back to colonial times. Moreover, tax-exempt bonds are an important form of federal assistance to states and localities. Because the federal government foregoes the tax revenue on interest earned by investors on tax-exempt municipal bonds, investors demand a much lower rate of interest than they otherwise would. States and localities benefit through a lower cost of capital.

Tax-exempt bonds are not plagued by any of the problems that would affect the success of tax-credit bond programs for environmental purposes, such as the "Better America Bonds" (BABs) program proposed by the Administration. Under the Administration's plan, state and local governments would have to apply to the Administrator of the Environmental Protection Agency (EPA) for the authority to issue tax-credit bonds. The EPA Administrator, in consultation with other federal agencies, would then review applications and award allocations to the applicants. The holder of a tax-credit bond would receive annual federal income tax credits equal to the applicable credit rate multiplied by the amount held on its anniversary date.

The Bond Market Association believes that a better, more efficient financing approach is one that involves the tax-exempt bond market. The municipal bond market is a large and established market with a broad base of investors, so secondary market trading is relatively active and liquid. Additionally, interest rates are set efficiently according to market-based rates of return. Finally, using tax-exempt financing, state and local governments can retain the authority and control of their land preservation projects, without having to get approval from federal authorities. Tax-credit bond programs, while commendable for their desire to finance land preservation, would create another level of federal bureaucracy and would intrude into a decision-making process that is best left to states and localities. In short, municipal bonds are well-tailored to providing tax-preferred financing for conservation and land preservation purposes, and would preserve the autonomy of state and local governments.

PUBLIC-PRIVATE PARTNERSHIPS

The Bond Market Association has consistently supported responsible proposals that would employ the use of public-private partnerships to expand the amount of capital available to finance vital public projects—ranging from school construction and highways, to parks and the environment. Through the utilization of innovative financing techniques, minimal federal resources are required to support state and local initiatives. By empowering the private sector to take more responsibility for public projects, the demand on the federal government is lessened. In addition, by designing programs that are self-supporting, financial risks are minimized, and all levels of government inevitably bear less financial burden.

CURRENT LAW

Currently, state and local governments can issue tax-exempt bonds without limit for environmental purposes as long as no more than ten percent of the proceeds are used by private entities in a business and no more than ten percent of the debt service is secured by private businesses, or no more than five percent of the bond proceeds are lent to private businesses or individuals. Under current law, private entities generally cannot borrow on a tax-exempt basis. However, an exception is provided for certain types of so-called private-activity bonds, including bonds issued by tax-exempt, 501(c)(3) organizations.

Private-activity bonds are generally subject to certain issuance limitations and certain restrictions on investment. Bonds issued by 501(c)(3) organizations are subject to some of the restrictions, but exempt from others. For example, 501(c)(3) bonds are exempt from the annual unified volume cap restriction that limits the issuance of other allowable private-activity bonds. Interest earned on 501(c)(3) bonds is also not subject to the individual alternative minimum tax. However, certain restrictions do apply to 501(c)(3) bonds. For example, private-activity bonds, including 501(c)(3) bonds, may be issued for uses consistent with their charter. Tax-exempt financing is allowed for the purchase of land and related property used in the exempt activities of the 501(c)(3). However, for environmental organizations, the leasing of timber and other renewable land use rights to finance the purchase of land is not a permitted purpose under existing law.

PENDING LEGISLATION

Legislation pending in the House (H.R. 1863) and Senate (S. 1085) proposes the use of innovative financing techniques to facilitate access to capital markets in a cost-efficient manner. Under the legislation, tax-exempt revenue bonds could be issued to finance the purchase of forest and agricultural lands by non-profit 501(c)(3) organizations. Government entities would issue the bonds on behalf of the non-profit organization, and the non-profit would typically obtain the ownership rights to the property. The benefits of this innovative approach would be several. First, local communities will be able to ensure that renewable resources will be protected by partnering with non-profit entities to acquire land that would otherwise be too expensive to finance. Second, non-profit entities could manage the renewal process of the land and collect revenues from the harvesting of the resources to pay for bonds issued to finance the land acquisition, thereby ensuring the conservation of the land for the long term. Meanwhile, original landowners would be compensated for the sale of their land at fair market values. Finally, the federal government would not take ownership of the land, so ownership would stay in the private sector.

CONCLUSIONS

The desire to preserve America's renewable resources is a laudable goal. Careful planning for the harvesting and renewal of resources will provide numerous economic and public benefits. The Bond Market Association fully supports proposals to finance environmental projects using innovative financing techniques such as those contained in H.R. 1863 and S. 1085. We urge Congress to act on this legislation quickly, and we look forward to working with Members of this Subcommittee as the legislation advances.

Statement of Peter Kopsco, Tax Policy Analyst, Friends of the Earth

INTRODUCTION

Friends of the Earth, a global environmental advocacy organization with organizations in 54 countries, supports expanding tax incentives for land preservation. It is very encouraging to see such a broad bipartisan effort to find solutions to the vexing problem of urban sprawl. This hearing comes at an ideal time. It is high time we shifted the focus from tax cuts at any cost to providing tax cuts that benefit those people and businesses that choose to benefit the environment.

Tax policy is a powerful tool to effect social change. One of the most important challenges facing us as a nation today is sprawling land use. The affects are widespread, and include:

- deterioration of traditional community centers;
- increased pressure on family farmers;
- unhealthy air and water pollution as a result paving of roadways and parking lots, and an increase in automobile traffic;
- dangerous traffic congestion;
- loss of open space for the enjoyment of people; and
- fragmentation, conversion and depletion of habitat for species.

Friends of the Earth feels that it is time to maximize this powerful tool to control this threat by discouraging sprawl style development and encouraging protection of open-space and by investing in tradition town centers.

There are two advantages to using the tax code to help control this threat to our communities and our environment. One is that the tax code provides incentives for people to take action voluntarily. The other is that by taking such steps voluntarily, landowners reduce the need for imposition of regulatory restrictions.

Many measures currently in place are helpful. Many measures under consideration today are steps in the right direction. As Congress moves forward, Friends of the Earth urges Members of Congress to consider whether tax legislation advances the goals of conservation of land, or instead merely benefits industries that degrade and pollute the environment.

CURRENT PROVISIONS IN THE TAX CODE

Friends of the Earth supports many of the measures currently in place. However, one need only look around many American towns and suburbs to see that there is plenty of room for improvement. Therefore, Friends of the Earth believes these measures should be expanded and new ideas should be nurtured.

Deductions for Donations of Conservation Easements

The deduction for charitable donations of conservation easements creates an incentive to preserve land for open space and to protect natural habitat. This makes such donations attractive and is a valuable program. But for little cost, in terms of revenue, Congress could expand its effect. One proposal to do so is before you today. Representative Johnson's bill would increase the size of this deduction across the board. Another approach, introduced in the Senate, would accelerate the deduction for conservation easements to benefit threatened and endangered species. Considering that preservation of land and protection of species diversity provides a public benefit incentives to private individuals to participate is worth the taxpayer investment. Friends of the Earth supports each of these measures and would advocate combining them. By sharing information and working together we can come up with new and powerful tools to slow down wasteful growth.

Exclusions for Donations of Conservation Easements

Another item that is currently in the tax code that benefits the environment is the exclusion from estate taxes of land subject to a conservation agreement. This provision fills two important roles. One, it provides an incentive to preserve land for endangered species. Another is that it insures that the land is managed properly.

This provision has a significant limitation, however -it is limited geographically. The exclusion currently applies only to land within 25 miles of a metropolitan area, national park or wilderness area; or 10 miles of an Urban National Forest. The result is that almost one-third of the continental United States is not eligible for the exemption. Not included are areas near national wildlife refuges and areas that have not yet reached the dubious status of metropolitan area. These restrictions exclude many pristine and sensitive lands near parks and many fast-growing areas that are not yet sufficiently developed to qualify as metropolitan areas. In many cases it is just these types of places that we most need to protect.

Some in Congress have advocated eliminating the estate tax. Under tax legislation passed in 1997, estate tax rates are already set to decline over the next seven years. The estate tax actually serves as a significant inducement to promote land conservation because donations of land for conservation purposes can reduce the estate tax burden. Conservationists believe that estate tax relief should be used as an incentive to encourage property owners to permanently protect land as habitat for wildlife, recreation, and open space. Cutting the estate tax without adding collateral incentives for conservation will reduce the overall amount of conservation. Rather than cutting the estate tax altogether, Congress should target cuts to encourage environmental benefits.

Differential Valuation of Agricultural Land

The differential valuation of agricultural land, already in place in the tax code is highly beneficial because it helps farmers and it helps fight sprawl. It helps farmers by enabling family farms stay in business from generation to generation. It does so by reducing pressure on families to sell their inheritance to pay estate taxes that can saddle large tracts of land. The result is preservation of traditional American communities, with farm and forestlands surrounding livable town and city centers. Again more can be done to relieve the pressure these farming families face. Friends of the Earth encourages this Sub-Committee to enact strong legislation to help maintain this sort of land use.

There are certainly many other provisions in the code that give citizens the ability to help out. Friends of the Earth encourages the Sub-Committee to find ways to expand and improve them.

SUPPORT FOR SELECTED PROPOSALS BEFORE THE SUB-COMMITTEE

- H.R. 2263, Charitable contribution deduction and exclusion for conservation easements: This bill would simply increase the incentives for charitable contributions of interests in land. This is a very common-sense approach that Friends of the Earth heartily supports. Doing so will increase participation and increase the amount of land we preserve. By taking such steps voluntarily, landowners reduce the need for imposition of regulatory restrictions.

- H.R. 2497, Open Space Preservation Act: This strong piece of legislation would be very helpful for families who wish to continue farming their land. It provides generous tax relief to farming families who chose to forever farm their land. First, it excludes from income all gains from the sale of farmland subject to an irrevocable covenant which permanently restricts the land to agricultural uses only. Second, it excludes from a decedent's gross estate the value of farmland subject to one of these irrevocable covenants. These will be very helpful for families dedicated to the farming way of life and will preserve open space for years to come.

- H.R. 2880, Conservation Tax Incentives Act of 1999: Often times landowners who cannot afford to donate property or who cannot use a deduction still want to conserve their land. In fact, this includes many farmers who may own a lot of land, but who do not have a lot of cash on hand. This bill provides such landowners with a way to conserve land by selling it for conservation purposes for less than they would do to developers. The provision allows these individuals to still come out ahead thanks to the tax savings. This is the sort of innovative and common-sense measure needed.

- H.R. 2380, Energy Efficient Tax Act: Among other things, this bill will promote the development of new energy efficient technology for homes, wind and biomass electricity production, and for electric and hybrid vehicles. Discussion of incentives for these new technologies fits-in well with discussion of incentives to fight sprawl because these technologies help to curb the pollution and resource depletion associated with sprawling development-especially the provisions relating to cars. As vehicle miles traveled continue to increase, we need to find cleaner ways to commute.

- H.R. 1863, Community Forestry and Agriculture Conservation Act: Friends of the Earth supports conserving forestlands. Friends of the Earth also supports sustainable timber management in private forestlands. Primarily, Friends of the Earth supports the values represented by forestland, such as habitat, and recreation. In cases where forests would otherwise be doomed to be developed or clear-cut it makes sense to preserve them using strategies like those created by this legislation. This bill has potential and Friends of the Earth advocates giving this innovative proposal a closer look.

- H.R. 1630, Brownfields Cleanup Act: Section 198 of the Internal Revenue Code allows taxpayers to deduct environmental remediation expenditures. It will expire in 2001. This bill simply extends the life of this measure indefinitely. This is a positive step that will increase participation by creating increased certainty for businesses engaged in these activities. Friends of the Earth supports brownfield redevelopment so long as the resources are spent wisely on our downtowns and on land that is forsaken. Taxpayer money should not be used simply to subsidize cleanup or redevelopment that would happen anyway.

- H.R. 2446, Better America Bonds Act: Creating tax exempt bonds for acquisition of open space, projects to improve water quality, and remediation of brownfields is a great idea and should be enacted. However, what is uncertain is whether this program will be taken advantage of by those who qualify, and whether the money will pin-point only those projects where public financing is necessary and not act as a subsidy for activities that fit the criteria but do not need the public money. This proposal deserves more exploration.

OTHER MEASURES TO CONSIDER

This Sub-Committee is to be commended for considering these proposals. Dialogues like this one will only increase support for common sense incentives that promote our environmental goals by increasing voluntary action by people on behalf of the environment. Ultimately, this will reduce the expensive burden government bears when we enact regulations instead.

Here are some other approaches Friends of the Earth supports.

- A land gains tax that discourages short term speculation of real estate. Short term speculation on land, contrasted with long term land stewardship, frequently

results in increased land fragmentation and conversion. The result is fragmentation of habitat, open space and ultimately the degradation of an area's character. This tax incentive discourages land speculation by removing a significant percentage of the capital gains made on these short term transactions, which are often times the result of government improvements anyway. Land gains taxes have proven to be very effective in Vermont.

- H.R. 1172, The Historic Homeownership Assistance Act, is another measure that we should continue to explore. This measure would grant a credit to owners of historic homes in urban downtowns. As such it would encourage the resettling of older buildings in urban centers.

CONCLUSION

Friends of the Earth is encouraged by this hearing and the attention this Subcommittee is giving to concerns about sprawl, conservation, energy efficiency and open space. We appreciate the opportunity to submit testimony.

Statement of Pacific Forest Trust, Boonville, CA

The Pacific Forest Trust (PFT) applauds Chairman Houghton and the Oversight Subcommittee for taking up the important and timely topic of federal tax law impacts on environmental conservation and preservation. PFT appreciates this opportunity to submit its views on this important topic.

PFT is a non-profit, 501(c)(3) organization dedicated to restoring, stewarding, and preserving the private, productive forests of the Pacific Northwest, with a primary focus on California, Oregon, and Washington. PFT works with landowners, forest managers, public agencies, local communities, and others to sustain private forest lands for the wealth of goods and services they provide. PFT believes that private forests will only be protected if they remain productive and can only be productive if protected.

BACKGROUND

The Pacific Forest Trust has worked for years to promote sustainable forest management and conservation in the Pacific Northwest. Yet, our experience has shown that the existing incentive structure is simply inadequate to reverse the trend towards deforestation. The trends at work in Pacific forests are reflected elsewhere across the nation, especially in the Southeast and Northeast—which also are home to highly productive forests. In fact, studies project a loss of 25 percent of South-eastern forest lands over the next decades if action is not taken. It is a sad irony that just as ecologists and forest scientists have begun to more fully understand the valuable and inter-connected services provided by forests, the loss of forests has accelerated nationally.

A MISSING TOOL: THE FOREST CONSERVATION TAX CREDIT

In order to conserve these valuable forest resources and stem the tide of forest conversion, a new incentive is required. A new tax credit—made available to forest landowners who enter into voluntary agreements to permanently conserve and steward forests—will protect the diverse services that intact natural and sustainably managed forests provide for society at large.

Such a tax credit should build upon the successes of existing tools and conservation principles that are familiar and fair to landowners and return real public benefits. Specifically:

- Tax incentives should be provided for landowners who voluntarily choose to protect and sustainably manage—over the long term—forest land. Incentives also should be provided for measures that reforest deforested areas, or turn agricultural land to forest cover.
- Significant tax incentives should only be provided for *permanent* forest conservation through conservation easements, which have proven their effectiveness in conserving land nationwide, and are flexible enough to meet the management goals for productive parcels.

A focused tax credit that promotes the long-term conservation of forest lands will help reverse this trend. While forests provide many benefits for society, the market does not adequately reward forest landowners who manage their forests to produce these benefits. However, tax incentives can provide a valuable inducement for forest

landowners to improve their stewardship. Such a public investment will prove to be a wise one, maintaining the public benefits of private forests available for future generations.

PFT has nearly completed its work of drafting a forest conservation tax proposal that reflects the principles outlined below.

THE PUBLIC BENEFITS OF PRODUCTIVE PRIVATE FOREST CONSERVATION

Protecting undeveloped areas—Forests provide an important limit to urban sprawl, protecting “open space” and undeveloped tracts of land at urban fringes and beyond. As open space protection becomes a priority for communities and policy-makers, protecting forested conservation lands is a way to secure multiple benefits with those conservation investments.

Conserving clean water and protecting watersheds—Approximately 60 percent of the total streamflow in the United States originates on forest land, most of which is privately owned. A number of urban areas—from New York to Seattle—long ago recognized the importance of publicly acquiring parts the forested watersheds that supply their drinking water. New York recently adopted a program that will utilize some \$300 million to acquire land and conservation easements. Such expenditures are estimated to save between \$4 and \$6 billion in water treatment facilities, plus several hundred million in annual operating costs (Budrock 1997, Revkin 1997). While few new opportunities for conserving watershed areas as *public* lands may exist today, increased incentives for stewardship of *private* forest lands will protect water quality for residential uses. Protecting forests and reducing watershed erosion not only benefits drinking water supply, but also conserves important habitat for fish, including habitat for rare and endangered salmon and trout species.

Providing wildlife habitat—At least 90 percent of federal threatened and endangered species have some or all of their habitat on non-federal lands, while forests provide an estimated 50 percent of the habitat for imperiled species (NRC 1998). Slowing or halting the conversion of nonfederal forests, and increasing their connectivity, will play critical role in the conservation of biological diversity. Conserving key forested habitats for endangered species also will significantly complement the current public and private resources being spent on wildlife and endangered species conservation programs.

Providing energy security—Protecting the forested land base, as well as promoting long-term, sustainable forest stewardship means secure long-term supplies of the renewable forest products and biomass. In addition to traditional forest wood products, forests can be sources for sustainable biomass fuels that increase our long-term energy security.

Providing jobs in sustainable forestry—Private forests support the vast majority of this country’s 1.2 million forest industry workers (NRC 1998). With sustainable practices and increases in long-term forest stewardship, this job base could remain stable or even expand. On the other hand, if forest area and sustain ability continues to decline, these forest jobs will significantly decrease in number.

Sequestering carbon—Forests are a major tool to reduce the buildup of carbon dioxide, the most prevalent greenhouse gas, storing carbon as biomass and in forest soils. It is estimated that non-federal forests store nearly 40 billion metric tons of carbon, sequestering more than 100 million metric tons of carbon annually. Older natural forests—including old-growth stands—hold vast amounts of carbon, and continue to sequester additional carbon often for hundreds of years (Franklin 1999).

Supplying alternative products—Some 450 specialty products—ranging from pinecones and floral greens to the raw materials used to produce pharmaceuticals—are gathered off of non-federal forests each year, yielding millions of dollars in sales. Worldwide trade in certain specialty forest products such as floral greens reaches into the billions of dollars annually. Observers estimate that such non-timber forest products will increase significantly in value in the years to come (Molina et al. 1997).

Providing critical opportunities for public recreation—Private forest lands provide significant opportunities for public recreation—about a quarter of all non-industrial private forest land, as well as considerable amounts of industrial forest land is used by the recreating public (NRC 1998). With increasing urbanization, these recreational opportunities will only become increasingly valuable over time.

Development and conversion of resource lands to other uses are the result of many forces, ranging from subsidizing development costs in rural areas to resource management practices. Given this diversity of drivers, it follows that a variety of public policy tools should be crafted to reduce undesirable development patterns and better conserve valuable but threatened natural resources. A number of these policy tools are before the Committee.

However, the package of existing and proposed tools does not adequately address the threats to highly significant forested ecosystems and land uses. Forests provide many essential services to all U.S. citizens—timber, water, recreation are but a few—but forests are being lost at an alarming and unacceptable rate. PFT would therefore like to draw the Committee's attention to the problem of forest fragmentation and loss, and put forward a recommendation to redress this problem.

The Problem of Forest Fragmentation

Forests cover approximately a third of the land area of the United States. About 60 percent of those forests are privately owned, while nearly three quarters of the productive timberlands are privately owned (timberlands are defined as forests capable of producing 20 cubic feet of marketable wood). During the 20th century, more than 276 million acres of US forest land has been lost, with 55 million acres of forests converted to other uses since 1978 alone (NRC 1998, DOE 1998). Such forest conversion is the result of many pressures, including suburban sprawl, leapfrogging development to rural areas, and unsustainable forest practices that degrade forests, making development a higher and better economic use of once-forested land.

The loss of productive private forest land in this country has repercussions that ripple through our economy and affect the resource base upon which both rural and urban communities depend. Forested lands are critical natural resource lands, conserving many different human and natural resources "under one roof." While much of that private forest land base has been lost, much still remains and should be the focus of protection efforts. Roughly 424 million acres of private forests are at stake—nearly 20 percent of the land area of the United States. Policies that promote sustainable conservation of these critical forest lands will pay significant dividends with numerous public and conservation benefits.

We look forward to working with members of this Committee to refine and carry that proposal forward with other appropriate tools to conserve important resource lands and open spaces in this country.

Thank you for the opportunity to submit this testimony.

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